EASTERN WASHINGTON BANKRUPTCY NOTES

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Spring Seminar Set

On March 22nd, 2000 (Yakima) and March 23rd, 2000 (Spokane), the Federal Bankruptcy Bar for the Eastern District of Washington will hold its Biannual Seminar for Regular and Occasional Bankruptcy Practitioners. The highlights of the last seminar included a national speaker and a low member price of $20 including lunch, and 6-1/2 credits. The bar will strive to meet the needs of the most parsimonious by again keeping the price low for attorneys and staff. Mark your calendars now!

On the date that this edition went to layout, the Bankruptcy Reform bill had a fifty-fifty chance of passing. (At least, that was the estimate of the American Bankruptcy Institute.) The present bill language has an effective date of six months after passage. As a result, if the bill does pass, the seminar will be heavily dedicated to the new bill, and thus a *must* for all practitioners, regular or occasional.

Election Results

Three positions on the Bankruptcy Bar Association Board of Directors were up for election. Incumbent Ian Ledlin remains in Position Number 3 of Spokane. Donald A. Boyd won the race for Position Number 2 of Yakima. Incumbent Gary Farrell remains in At-Large Position Number 2. Congratulations Ian, Don and Gary.

The next elections will be held in May of 2000, in order for the newly elected members of the board to be installed at the annual Sun Mountain Retreat. Volunteers will again and always be appreciated.

C.L.E. Credits for Sun Mountain Seminar

The final Continuing Legal Education credits for those who attended the seminar at the Sun Mountain Lodge on June 11th and 12th, 1999 are as follows:

Washington State Bar: 9 credits, one of which is for ethics.

The Idaho, Montana and Oregon State Bars have awarded 8.5 credits, one of which is for ethics.

Note that the Seminar brochure underestimated the amount of credits that would be awarded.

Bankruptcy Fraud Conviction Achieved

On April 15 1999, Charlotte Machart was sentenced to three years probation, 150 hours of community service and $1,400 restitution. She was sentenced for criminal activity related to the chapter 13 bankruptcy filing for herself and her husband. Resisting a creditor's motion to lift stay so that it could proceed to a foreclosure of real property, Mrs. Machart filed false documents with the court, including an appraisal with altered dates and amounts. In addition, court staff alertly noticed that a prospective buyer identified by Mrs. Machart was himself in a chapter 13. That raised the issue of whether the "buyer" had the resources to purchase the property.

The matter was referred to the U.S. Attorney. On January 19, 1999, Mrs. Machart pled guilty to one count of concealment of assets. 18 U.S.C. §152.

Inside...

Bankruptcy Foreclosure Fraud Alert

In the past year, the Western District of Washington has experienced a significant increase in bankruptcy related foreclosure scams. The fraud consists of a transfer of a fractional interest in real property on the eve of foreclosure followed by the filing of a bankruptcy petition by the transferee to stop the foreclosure proceedings.

There are several variations of the scheme, two of which are most prevalent in the western side of the mountains. In the first, a borrower facing a non-judicial foreclosure quit claims an undivided percentage interest in the property to a person who is in bankruptcy. Typically, the transferee is an unwitting debtor in California, randomly selected, and unaware of the transfer or the transferor. The bankruptcy triggers the automatic stay under 11 U.S.C. § 362 and stops the foreclosure until the lender can obtain relief from the stay or an abandonment of the property from the bankruptcy trustee.

In the second scenario, a newly created "trust" is formed to receive transfers of fractional interests in properties facing foreclosure. When a significant number of transfers have been received, the trust files bankruptcy triggering the automatic stay with respect to all the properties. The trusts receive property transfers from across the country and can be filed in any bankruptcy court jurisdiction. Typically, the cases are dismissed by the bankruptcy court after they fail to meet deadlines for filing schedules and statements or for failure to attend the meeting of creditors.

Lenders are not the only victims in these schemes. The perpetrator of the scam, usually a bankruptcy mill or bankruptcy petition preparer, monitors foreclosure notices and contacts the property owner with a fraudulent promise to refinance the mortgage or to negotiate with the lender to have the arrearages added to the end of the mortgage. Property owners often pay several hundred dollars up front and monthly "retainers" that may equal the amount of the monthly mortgage payment to the mill. The mill fails to live up to its promises, however, and the owners eventually lose their property.

Not every bankruptcy petition filed to avoid foreclosure is abusive or fraudulent. There may be legitimate reasons to file bankruptcy to delay a foreclosure, including obtaining additional time to obtain refinancing, paying arrearages through a bankruptcy plan or obtaining a discharge of the debt. By comparison, the abusive practices outlined above involve bankruptcy cases which are filed for the sole purpose of delaying foreclosure without any intention of completing the bankruptcy process.

The United States Trustee's Office would like to hear from you if you or your clients have experienced similar problems. Please direct your responses to, depending on whether it is Western or Eastern Washington:

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1200 6th Ave., Suite 600
Seattle, WA 98101
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or

Robert D. Miller, Jr.
Assistant U.S. Trustee
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920 W. Riverside, Room 593
Spokane, WA 99201
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Sweeney Sentenced

Michael G. Sweeney filed his chapter 13 petition on April 7th, 1995. The chapter 13 trustee referred his case to the United States Attorney because he was concerned with a possible failure to disclose assets. The case eventually mushroomed into an indictment for broader issues than bankruptcy crime, and on March 11th, 1999, Mr. Sweeney pled guilty to four counts:

1. Mail Fraud, 18 U.S.C. §1341
2. Wire Fraud, 18 U.S.C. §1343
3. Interstate transportation of stolen property, 18 U.S.C. §2314, and
4. The unlawful use of a fictitious name to commit mail fraud, 18 U.S.C. §1342.

Count 3 above involved the taking of $5,000 from a wheelchair bound Idaho Catholic priest on the pretext that he would invest those funds in an annuity for the priest. Mr. Sweeney did not do so, but instead returned to Washington, cashed the check and pocketed the proceeds.

On August 24th, 1999, Mr. Sweeney was sentenced to 33 months in federal prison, three years of supervised release, restitution of $93,503 (which is not dischargeable in bankruptcy), and he must notify clients and associates that he is not a certified public accountant.

Rolf Tangvald was the assistant U.S. Attorney assigned to the case. He credits the F.B.I. with professional and exhaustive work which led to the successful prosecution of this case.

From the U.S. Trustee

Attorney Sanctioned for Submitting Estimated Time Records

Attorneys who apply to the bankruptcy court for allowance of fees are required to support their applications with time sheets. Time sheets are summaries of a contemporaneous record of services performed. Attorneys who do not have a contemporaneous record of services performed should not represent that they do.

In re Kent, 96-05653-W13, is a case from this district in which the time sheets submitted by the attorney appeared to be a contemporaneous record of services performed by the attorney and the time expended for those services. In fact, the attorney had not kept contemporaneous records for all of his time. For some entries showing attorney time, the entry was only an after-the-fact estimate of the time spent by the attorney or other office staff. The court approved the fee without that knowledge.

When the United States Trustee learned that the time sheet was not based on an contemporaneous record, it brought a motion to examine the attorney's previously allowed fees. The matter was settled when the attorney formally stipulated to pay sanctions for his conduct. The stipulation was approved by the court.

Robert D. Miller, Jr., Assistant U.S. Trustee

Post Discharge Attorney Fees

By Ian Ledlin

Consider the following scenario:

1. Smith agreed to purchase certain real property from Jones. Their Agreement contained certain warranties relating to the property. It also provided that, in the event of a dispute, the prevailing party would be entitled to recover reasonable attorney fees.

2. Smith filed a Chapter 7 Bankruptcy case, received a discharge, and the case was closed.

3. Smith sued Jones in state court, claiming that Jones breached warranties in the Agreement.

4. The state court tried the lawsuit and found for Jones.

5. Under the terms of the Agreement, Jones is entitled to judgment against Smith for attorney fees.

6. Smith contends that attorney fees are improper because that the contractual obligation to pay the attorney fees was discharged by the bankruptcy.

Can the Court award attorney fees against Smith?

This question is answered by the case of *Siegel v. Federal Home Loan Mortg. Corp.*, 143 F.3d 525 (9th Cir. 1998). There the debtor/plaintiff sued a creditor/defendant after the debtor's bankruptcy had been filed. That lawsuit was grounded in the debtor's claims of tort and breach of contract arising from the foreclosure of deeds of trust securing the debtor's properties. The creditor prevailed and was awarded attorney fees. The debtor appealed, claiming that the attorney fees, although incurred post-bankruptcy, were encompassed in the underlying obligations discharged by the bankruptcy.

The *Siegel* Court disagreed with the debtor's position:

> Despite the fact that [creditor's] rights under the notes and deeds of trust had been decided in the bankruptcy court and [creditor's] claims had been discharged there, [debtor] chose to sue on the theory that [creditor] had breached the deeds of trust's promises. Unfortunately for him, the deeds of trust provide for attorney's fees if the lender is pursuing its rights under them. There is no dispute that the provision was valid under state law and would apply here if the bankruptcy proceedings did not, somehow, affect it. For purposes of this action, it was not affected by those proceedings.
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> . . .
>
> This is a case where the debtor, . . . , had been freed from the untoward effects of contracts he had entered into. [Creditor] could not pursue him further, nor could anyone else. He, however, chose to return to the fray and to use the contract as a weapon. It is perfectly just, and within the purposes of bankruptcy, to allow the same weapon to be used against him.

The *Siegel* Court held that, although the debtor's pre-bankruptcy obligations under the contracts were discharged, the attorney fee obligation incurred post-bankruptcy was not.

Applying *Siegel* to our hypothetical case, Smith may be held liable for payment of Jones' reasonable attorney fees. Although a bankruptcy discharge is designed to give broad relief to debtors, it does not cover every conceivable claim that a debtor may incur.

Tenth Circuit Orders Credit Union to Return Client's Life Savings

By Nancy L. Isserlis
Regional Director, Columbia Legal Services

In a recent case of first impression decided by the Tenth Circuit Court of Appeals, the court ruled that a credit union's seizure of funds held in a bank account violated both the Social Security Act and the Civil Service Retirement Act. *Tom V. First American Credit Union,* 151 F.3d 1290 (10th Cir. 1998). These statutes declare that social security and civil service retirement benefits are exempt from "execution, levy, attachment, garnishment, or other legal process". The plaintiff, Bertha Tom, argued that the credit union's common law right of setoff was "other legal process" and was improper. The Tenth Circuit agreed, and this decision was the first to resolve this issue in a federal appellate court.

Bertha Tom contacted the People's Legal Services in 1994 because First American Credit Union had seized her bank account claiming that she owed them for a past debt. The $1,769 that Mrs. Tom had in her account constituted her life savings. All the money was from her own social security benefits and her late husband's federal civil service retirement benefits. The plaintiff was an elderly woman with limited English speaking abilities, and a hearing impairment. The first attorney she contacted told her the credit union had done nothing wrong in exercising its setoff rights. She could not believe that the credit union had the right to just take the money in her account without proving that she actually owed them anything, and without the ability to establish the exempt status of the funds. She then contacted DNA-People's Legal Services who brought the case on her behalf.

The credit union argued that its actions were valid based on its common law right of setoff. Setoff provides that the bank or credit union does not have to sue and establish in court that an actual debt exists, and gives the credit union or bank the right to take any money left with it on deposit if the credit union or bank believes the depositor owes it any money. The credit union argued that since it did not go through the court system to seize the money in Mrs. Tom's account, that its actions could not be considered "legal process" The District Court disagreed and concluded that the credit union's use of setoff was a legal process and ruled in Mrs. Tom's favor.

The Tenth Circuit Court of Appeals affirmed the District Court's decision in Mrs. Tom's favor that the credit union's setoff constituted "other legal process" and was illegal under federal law since it violates the anti-assignment provisions of the Social Security Act and the Civil Service Retirement Act.

While no case on point has been decided in the Ninth Circuit, attorneys representing credit unions and other lending institutions should be aware of this new case and its impact on collection practices in our jurisdiction.

The History of Bankruptcy

By Frederick P. Corbit

Frederick P. Corbit is a lawyer practicing in Seattle and a shareholder in the law firm of Heller, Ehrman, White & McAuliffe. He has lectured on the history of bankruptcy at the last three seminars held in conjunction with the Eastern Washington Bankruptcy Section's annual meeting. The transcript of his first lecture, entitled "The American Experiment, Part I," was published in a previous edition of this newsletter. What follows are the transcripts of his second lecture, entitled "The Early Years: 1985 B.C.–533 A.D.," and his third lecture, "Early English Law." As in the past, Fred injects some humor into each lecture.

The Early Years: 1785 B.C.–533 A.D.

Last year I titled my lecture "The American Experiment, Part I," and I covered the time period from 1787 to 1898. This year, when I was asked to speak again, I think it was assumed that I would follow-up with Part II of the American Experiment. However, today I am going to cover the early years of bankruptcy, specifically, from 1785 B.C. to 533 A.D. Like last year, the subject today is just a small part of the history of bankruptcy.

Bankruptcy issues do not come up in more primitive periods because credit sales were virtually unknown. The existence of money, as opposed to barter, facilitated the use of credit and trade. Further, it was the settling down of nomadic peoples into agricultural communities that facilitated debt contracting in anticipation of seasonal harvests.

Some recent authors have naively asserted that the roots of our bankruptcy law can be traced back to 16th century England, but the roots go back to the ancient civilizations in Rome, Greece and Babylonia. This history may be lost on today's Congress but not on its predecessors. In 1822 Congressman Sawyer, when addressing the House of Representatives about a pending bankruptcy bill, stated:

> [Bankruptcy law has been] traced ... to the time of the Romans, by whom it was borrowed from the Greeks, where it was in full operation in the earliest periods of their commerce. From them it has been handed down, and progressed, through all civilized nations, with their trade, until it has become interwoven into the very essence of modern Governments.

Concepts such as discharge, joint liability, limitations on serial discharge, recording statutes, personal exemptions, prorated distribution, estate sales, non-recourse liability, exemptions, recovery of fraudulent conveyances, limitations on self-help, special treatment of farmers and the appointment of trustees are all matters that civilizations dealt with thousands of years ago, and in some cases dealt with in a manner more ingenious than we do today.

While the roots of our existing bankruptcy law go back to Ancient Greece and Babylonia, other cultures' methods for dealing with bankruptcy have led to dead ends. For example, it was the custom in Celtic Ireland for the creditor to fast on the doorstop of the debtor's house and refuse to leave until paid. If the creditor died from starvation, then the debtor was held responsible, and the creditor's spirit was thought to torment the debtor until eternity. If this debt collection mechanism was the one from which the current Bankruptcy Code evolved, there would be a lot of dead credit card company employees on the front porches of the homes in our neighborhoods.

If our law was the modern version of a system that was used in ancient India, the result could even be worse. In India, the practice was similar to Celtic Ireland, but creditors could send a priest in their place. The ancient system in India, if used as the basis for our current laws, would have produced a practice unpopular with the Bar. In the bankruptcy arena, lawyers eventually replaced priests as creditor advocates. Consequently, if our law was based on the old law from India, in place of dead priests and creditors, we would find the corpses of creditor attorneys on the door steps. Fortunately, the law we now follow flows from different roots.

The first bankruptcy code may have been the code of Hammurabi. Hammurabi the First was the king and founder of the Babylonian empire in approximately 1750 B.C. This was one of mankind's earliest existing civilizations. One code pertained to the regulation of debt and default that resulted from farmers contracting debt from merchants in light of future harvest.

There were some principles of law enunciated in the Code of Hammurabi that we follow today. For example, over-zealous creditors and dishonest debtors were punished. Also, like under today's Chapter 12, farmers got special treatment. Hammurabi decreed that if a farmer's goods were valued at more than what was owed, the merchant could take only enough to satisfy the debt. Further, if the farmer was insolvent, the conveyance of all of the debtor's assets to the creditor fully satisfied the debt.

Finally, Hammurabi's royal decrees may have been the first example of legal precedent. Hammurabi's royal decrees were inscribed in stone in order to govern future cases of insolvency. I expect that I would have as much success before local bankruptcy judges in Washington citing to a 1750 B.C. stone tablet as I have had citing bankruptcy opinions out of California.

Ancient Hebrew law, while being very different from our current laws relating to creditor/debtor matters, also had influence on our current laws. It has been hypothesized that the six-year limitation on serial discharge introduced to United States bankruptcy law in 1903 was biblically influenced. The seventh day is the Sabbath and every seventh year is the sabbatical year. In 900 B.C. there was a religiously ordained periodic discharge of indebtedness and release of ransom slaves that coincided with the sabbatical year.

Debtors in Ancient Greece like in Babylonia were typically small farmers with mortgaged land also secured by their person. The bond of the body was a voluntary term of the loan. Creditors were typically paid from seasonal harvests, but with the aristocracy owning the best lands, during the times of bad harvests, poor farmers could get into financial trouble. By the days of Draco, there were many defaults and there was an acute problem. Draco, who drew up Athens' first written code of law in 621 B.C., is the root for the modern word "draconian" as a consequence of his harsh rule.

Draco made default on debt a criminal offense in the same class as murder. Draco proved to be unpopular, was driven out of Athens, and eventually murdered. However, he leaves as his legacy more than just his name. There was a real property recording system used in Draco's time. At the time of Draco, little stone pillars marked property as being mortgaged for debt. In his day, if you wanted to know if property was encumbered, you didn't have to go down to the county office and look through dusty old files, or pay to have a title company run a search; you could merely go to the property itself and see if you found one of the small stone mortgage markers.

Following Draco was Solon. He was regarded as one of the seven wise men of Ancient Greece, and Aristotle would later remark that democracy began with him.

The History of Bankruptcy, *cont'd*

In modern times Solon probably would have been unable to show his greatness. Rather than rule, he probably would have been arrested by the Feds for insider trading. While Solon's actions were well-intended to outlaw enslavement on debt and to provide relief to the masses of poor indigent farmers, he also indiscreetly divulged his intentions to some of his friends. These insiders quickly contracted indebtedness and gained title to lands prior to the announcement of Solon's decree. The general cancellation of debts made Solon's friends rich.

The Ancient Greek laws were used by the Romans, and the Ancient Roman law forms the basis from which later bankruptcy laws descended and built upon. The rule of Roman law begins with the writing down of the 12 tables in 451 B.C.

Rome initially copied the early Athenian custom of including the insolvent debtor's person in the estate and permitting their sale as judgment slaves. Debtors would first sell their children and wife (or wives) to meet a debt. This is a much more serious form of joint liability than we have under the Washington State community property statutes.

In later days of the Roman Empire, a five-year limit on ransom slavery was put into effect. Today, some Chapter13 debtors would note the parallel between Roman law and the limitations imposed by Section1322(d). However, even the most critical Chapter13 debtors would have to admit that the powers of the United States Trustee's office are not as great as an Emperor.

Roman law provided a means for creditors to divide the debtor's estate in a manner similar to modern bankruptcy laws, but since the law included the debtor's person as part of the property, there was the possibility of obtaining their "cut" of the estate in flesh. The threat of taking the debtor to the plaza and actually dividing him was probably rarely used because the debtor was likely worth more alive than in pieces, but the threat of dismemberment is probably a greater incentive for coming up with a good-faith plan than is the threat of the denial of a discharge.

The irony of dismembering a debtor was not lost on Shakespeare. In *The Merchant of Venice*, Shakespeare created the character Shylock. Shylock was a money lender who contracted a "pound of flesh" as bond for a loan to the merchant Antonio. Amidst rumors that Antonio lost his ships at sea and would become financially embarrassed, Shylock had Antonio arrested on charges of debt. The jailer held Antonio for trial to prevent him from fleeing and Shylock almost succeeded in enforcing his contract for the pound of flesh. However, a brilliant legal maneuver spared Antonio: Lord Duke accepted the argument that the contract did not include Antonio's blood. Accordingly, Shylock could extract his one pound of flesh as long as he did not draw one drop of blood. Because he could not do so, Shylock's contract was valid against Antonio, but yet was unenforceable.

Eventually debt collection procedures moved to be exclusively against the defaulting debtor's non-bodily property. In fact, there were times in Rome where some of the leaders were actually kindhearted. After the sacking of Rome by the Gauls in 387 B.C., Marcus Manlius, a popular leader and a war hero, tried to help the Plebeians who incurred heavy debts rebuilding and restocking farms. Manlius eventually sold his estate and spent his fortune trying to release imprisoned debtors. In a heart-rendering display, Manlius introduced a measure to reform debtor laws in the Forum. To drive his point home, Manlius presented a debtor to the forum that had recently escaped from private imprisonment at a creditor's house. The debtor was covered with wounds and blood from a brutal, but common and legal, private incarceration on debt. But proving that no good deed goes unpunished, Manlius was later condemned as a traitor and sentenced to death. In spite of the untimely death of Marcus Manlius, Roman law did change and by 326 B.C. slavery on account of debt was abolished and prisoners previously imprisoned because of debt were released.

By 105 B.C. detailed bankruptcy legislation was passed. The law provided that a debtor's entire estate was sold for the benefit of creditors. After public decrees and advertisement, creditors put in their claims, elected a trustee to supervise the sale, and eventually the estate of the debtor was put up for auction to the highest bidder. Creditors received a pro rata distribution.

The Romans also had laws that did the same thing as our new limited liability company and limited liability partnership statutes. Roman law, which still authorized slavery, allowed slaves to own and operate a business. Accordingly, a master could engage in a risky business immune from personal liability if he had the business conducted by his slave.

Roman law also can be cited as the first example of giving debtors the right to exempt property from execution. Although a discharge was not granted after a debtor's estate was auctioned off, debtors who voluntarily made their property available to their creditors were entitled to retain property necessary for their subsistence. An honest debtor could also ask the emperor to require creditors to vote between the choice of current liquidation with pro rata payment or a debt extension not exceeding five years. Again, note the similarities to today's Chapter13.

In 529 A.D. Justinian's Code was published, and the law was promulgated on Decembe 30, 533. This law established procedure, process, and set down the body of law in an organized fashion. Statutes became less vague and there was no longer the same problem of old laws lapsing into history or usage. Previously, enactments and decrees may have only been enforced during each emperor's reign or with no rational pattern. Codified law greatly improved practice and cleared up ambiguities. Medieval European nations later incorporated or adopted the Justinian system of codified Roman law into their legal systems, but bankruptcy during the Middle Ages is another chapter.

History of Bankruptcy: Early English Law

Two years ago my lecture was titled "The American Experiment, Part I" and I covered the time period from 1787 to 1898. Last year my lecture was entitled "The History of Bankruptcy: The Early Years, 1785 B.C. through 533 A.D." Today I will discuss bankruptcy in England from the late middle ages until about 1700. (So that the subject matter is not misconstrued, when I talk about bankruptcy in the late middle ages, you should know that I am not talking about individuals in their fifties filing bankruptcy, but creditor/debtor law as it existed in 1500 A.D.)

When I first started my research on bankruptcy history I thought that early English law would be the foundation of our bankruptcy law. However, as I noted in my lecture last year, roots for existing bankruptcy law go back to Ancient Greece and Babylonia. Accordingly, those historians that have attributed the roots of our bankruptcy law to the 15th or 16th centuries in England are mistaken.

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Nevertheless, early English law does have its own interesting points. However, like much of what is English, it was stolen from others. As the British stole the greatest Egyptian and Greek antiquities, they borrowed their bankruptcy law from other sources. The first English bankruptcy statute that was enacted in 1542 was a direct translation of French law. Further, French bankruptcy law was adapted from the mercantile city-states of Northern Italy where various statutes were enacted starting in the 14th century. These early Italian statutes were modified versions of Justinian's Code that was published in 529 A.D. My discussion of Justinian's Code is where I left off in my last lecture.

However, even though the first English bankruptcy statute law was a copy of French law that was based and copied from Italian law, which was derived from the Greek, who were influenced by the Babylonians, it is still of interest to us because the English statutes occupy a prominent position in the development of our bankruptcy law.

Additionally, much of our culture's perception of bankruptcy law and insolvency can be traced to the literature of England. Foremost among the popular English literature defining what people think about bankruptcy are books by Charles Dickens.

Charles Dickens' popularity in the 1800s was equivalent to that of a modern day television star. Dickens wrote novels in monthly, even weekly installments, and published them as newspaper serials. His goal was to satisfy the taste and expectations of a mass audience. It was said that women fainted by dozens on hearing his narration of the murder scene from Oliver Twist.

Also, many biographers have noted that his books were fueled by the events of his childhood and youth. These events included his father being imprisoned for debt.

Charles' father, John Dickens, was a hospitable fellow who tended to outspend his modest government clerk's salary. After the Dickens family moved to London, John Dickens' excesses caught up with him and he was arrested for debt and sent to prison. His wife and youngest children moved into prison with him. Twelve-year-old Charles lodged nearby and went to work full-time in a shoe polish factory, pasting labels on bottles. The job ended within months, but Charles' memory of its humiliation never faded. As an adult he hid the incident from all but one close friend; even his wife remained in the dark. Given Dickens' bent for concealing his own past, it is no accident that secrets and mysterious life histories lie at the heart of many of his stories or that famous prisons in his novels are the by product of his exposure to debtors' prison.

Even when his father's imprisonment was over, Charles' mother tried to have her son keep the job in the shoe polish factory. Dickens said "I never afterward forgot" and "I never shall forget that my mother was warm for my being sent back." Charles Dickens, true to his word, never did forget the suffering, nor did he let the world forget. The inscription on his tombstone in Poet's Corner in Westminister Abbey reads: "He was a sympathizer to the poor, the suffering and the oppressed...."

To get a better understanding of what debtors prison was like, I reviewed some old cases and the history of the Lancaster Castle which housed between 300 and 400 debtors at any one time. (It took me some time to get these materials because I was third in the que at the library. I couldn't look at the materials on debtors' prison until the congressional staffer working on the bankruptcy amendments was done, and then I had to wait until the U.S. Trustee could copy the material for amendments to the new local bankruptcy rules.) However, when I did get the material, much of what I found was consistent with Charles Dickens' opinion of debtors' prison.

In fact, I found one 1663 case, the case of *Manby v. Scott*, that shows the harsh treatment the laws could afford a debtor. The court in the *Manby* case stated, and I quote:

> If a man be taken in execution and lie in prison for debt, neither the plaintiff at whose suit he is arrested, nor the sheriff who took him, is bound to find him meat, drink or clothes; but he must live on his own, or on the charity of others: and if no man will relieve him, let him die in the name of God, says the law; and so say I.

Mr. Manby was a shopkeeper who provided goods and wares to Mrs. Scott when she was separated from her husband. As a married woman in England in the 1600s she had virtually no rights of her own and when she left her husband she had no property. She tried to reconcile with her husband but he would not take her back. Having no money nor home, she purchased food and clothes on credit. When Mr. Manby did not get paid by Mrs. Scott he brought suit against Mr. Scott. Mr. Scott defended the action by arguing that he had no responsibility for his estranged spouse. The court ruled in favor of the defendant and poor Mrs. Scott had no sources of funds to repay the debts. The court in denying the claim against Mr. Scott ruled as follows:

> If a woman, who can have no goods of her own to live on, will depart from her husband against his will, and will not submit herself to him, let her live on charity or starve in the name of God; for in such case the law says, her evil demeanor has brought it upon herself, and her death ought to be imputed to her own willfulness.

Accordingly, being left to starve could be worse than having creditors put you in debtors prison. At least debtors in debtor's prison had the opportunity to work for food.

The creditor paid the prison keeper or jailer to incarcerate his debtor, and in the debtors' prison individuals without other support were required to work within the prison and, in return, received some food. For example, I found that in the debtors' prison located at Lancaster Castle, debtors received for their labor three ounces of bread, four ounces of oatmeal and one ounce of salt per day and ten pounds of potatoes per week.

Creditors hoped that relatives would come forth to pay debts in order to secure the release of prisoners on debt. Creditors who did not want the burden of paying for incarceration may have let their debtors go, but if a creditor thought a debtor had a hidden estate or a wealthy brother or uncle it was altogether possible to imprison that debtor in perpetuity. I was able to find one instance where a man was in Fleet Prison for 14 years on account of his debts.

Eventually limitations on how long a debtor could serve in debtors' prison were instituted. By 1678, debtors could demand their release after two years of providing labor in a public workhouse.

However, whether imprisonment was for 14 years or a much shorter time period, the treatment was not the same for all. If a debtor had access to money, life in debtors' prison, like the Lancaster Castle, was not necessarily so bad. For some, the Lancaster Castle, which was governed at one time by James Hansbrow, was referred to as "Hansbrow's Hotel." In fact in the 1800s there were letters addressed to debtors in care of "Hansbrow's Hotel."

If a debtor still had access to money through friends or family, life was quite different than that afforded to a Dickens family or poor Mrs. Scott. In Hansbrow Hotel a choice of 22 rooms were available, priced from 5 shillings to 30 shillings (30 shillings was 1-1/2 pounds). The fee included fire, candles, use of culinary utensils, and the services of a "room-man" who did the cooking, cleaning and waiting on. Debtors could have beer, wine and

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tobacco, but not spirits. They could buy newspapers, food and clothing, follow their trades or professions, and have visitors from 8 a.m. to 8 p.m. Their days were spent playing games in the courtyard and any musicians who were imprisoned would often play at concerts or dances to amuse their fellow debtors. The debtors' market was held in the Castle Yard where meat, bread, butter, groceries, vegetables, fish and fruit could be purchased.

In situations where debtors' prison was used to keep debtors from fleeing or to coerce debtors into identifying concealed assets, it may have had a purpose. However, it certainly wasn't a place where debtor could go and earn money to pay off his debts.

However, economic policy was a significant influence behind creditor/debtor law in the 1500s. The purpose of early creditor/debtor laws was not to protect debtors, nor was it to give them a chance to reorganize their affairs. The purpose of the law was to influence merchants to come into the realm and sell their goods. The laws were related to collection of claims, not discharge of debts. This is quite different than today.

Today we are a society in which people are encouraged to be buyers, but from middle ages through the 1800s merchants were not always readily available. The statute of merchants, one important early English statute, which was originally written in French as the English system was conducted until the 15th century, makes clear that its purpose was to encourage merchants.

Accordingly, in the middle ages in order to stimulate the economy, and for the well-being of citizens, it may have been necessary to protect merchants. Query: In the present economy are there enough goods and services in the market? Do we really need to have Congress severely tighten up discharge provisions to protect the banks that issued all credit cards? I think it could be argued that we are in a different economic situation than we were in the middle ages and that we need a policy that encourages less credit, rather than a policy that further helps creditors in their collection of debts—but Congress in its infinite wisdom thinks otherwise.

Another policy concern addressed in the early English bankruptcy statutes was equality of creditors' claims. Until the 1500s, the first creditor to bring suit against the debtor taking his body as bond had first rights over the defendant's estate. Collection actions were on a first-come first-served basis.

This first-come first-served law was regarded as an advantage for the rich because they had much better information enabling them to obtain superior recoveries by being first to jump in line. Further, creditors living farther away from the court also had administrative problems in speedily pressing their claims.

The first English law mandating a pro rata sharing came into existence in 1542 during the reign of Henry XIII. Under this early law, men in groups of three acted together in what was eventually known as a "bankruptcy commission" and listened to complaints of a creditor or creditors. After the hearing the bankruptcy commission was authorized to seize the property and body of the debtor, and distribute the bankrupt's estate pro rata among creditors. (Unlike our recent U.S. Bankruptcy Commission, the commission of King Henry XIII actually had power to implement needed changes in credit/debtor laws.)

While this early English bankruptcy law was mainly directed against fraudulent debtors, it also contained sanctions against fraudulent actions by others. Persons who helped the bankrupt by concealing property were assessed a punishment of double the value of the property that was concealed. People who made false claims against the defendant forfeited double the amount of their claims. And the punishments and forfeitures were applied to the recovery of bona fide creditors.

There was no discharge of the debtor's remaining debts. A debtor remained liable for all unpaid obligations and creditors retained all remedies in like manner as before the bankruptcy excepting their proportionate recoveries in the case. Bankrupts were merely stripped of all property and still held liable for unpaid debts. Moreover, bankrupts were considered criminals for several centuries. Bankruptcy law did not distinguish between honest but misfortunate insolvents and dishonest frauds. Bankruptcy was assumed due to fraud as opposed to misfortune.

The commission also had the ability to dole out corporal punishment. If unpaid debts amounted to 10 pounds or more the bankrupt could be punished by being placed in a pillory in some public place for two hours and have one of his ears nailed to the pillory and cut off.

Under early English law, the feudal nobility were also excluded from serving in the House of Lords if they had been adjudged bankrupt. (The only other reason I was able to find to exclude an otherwise qualified man from serving the House of Lords was if they were adjudged insane or determined to be Irish).

A five year statute of limitations on voidable preferences was added in 1623. Transfers and conveyance of property for value could not be impeached unless a commission had been issued within 5 years of the commitment of the act of bankruptcy.

The introduction of a debtor discharge did not take place until the reign of Queen Anne. In 1705 a revolutionary statutory discharge provision was enacted. The statute was at first only a temporary three-year enactment to relieve very poor economic conditions, but later was reenacted on more than a dozen occasions. The introduction of a limited discharge was a reward for bankrupts that complied with the law. It was also thought to encourage bankrupts to come forward and submit to the commission. Not only was the bankrupt entitled to discharge, the debtor could share in the distribution from the bankruptcy estate. If the estate paid 8 shillings on the pound (40%), the debtor could receive 5% of the net estate up to a maximum of 200 pounds. If the net estate after charges were deducted did not pay creditors 40%, then the bankrupt did not receive the 5% allowance, but could receive a lesser amount as commissioner saw fit.

Let me conclude, that there was no line at the library for the statutes providing for debtor relief that were enacted during Queen Anne's reign. But, I still haven't been able to get copies of the earlier case authority where debtors' ears were nailed to the pillory because those cases are still checked out to the congressional staffer in charge of putting more creditor protections in our present bankruptcy code.

(The lecture on "Early English" concluded with a discussion of the time period where the first lecture on the "Great American Experiment, Part I" began.)

[1] An excellent discussion of the history of bankruptcy for this period can be found in *The Division and Destruction of Value and Economic Analysis of Bankruptcy Law*, by Joseph Pomykala. Mr.Pomykala's article may not yet be published, but was presented as a dissertation in economics to the faculties of the University of Pennsylvania in partial fulfillment of the requirements for the Degree of Doctor in Philosophy in 1997. Much of the material in this speech came directly from Mr. Pomykala.

[2] A more detailed discussion of the history of bankruptcy for this period can be found in a 1918 University of Pennsylvania Law Review article, entitled *The Early History of Bankruptcy Law*, by Louis Edward Levinthal, in Chapters 1 and 2 in a book entitled *A History of the Bankruptcy Clause of the Constitution of the United States of America*, by F. Regis Noel that was published in the 1920's, and in the first 570 pages of *The Division and Destruction of Value and Economic Analysis of Bankruptcy Law*, by Joseph Pomykala. Also, some of the information for this speech was gathered from the following web sites: http://www.fidnet.com/~dapm1955/dickens./index.html; http://www.lancashire.com\lcc\res\ps\castle\debtors.htm; http://aoelite.com\booknotes\twocities.html.

From the Clerk

Advisory Committee

The court's Standing Advisory Committee met on June 10, 1999 at Sun Mountain. A report of the meeting is available on the court's website at www.waeb.uscourts.com. The Standing Advisory Committee has provided valuable input to the judges, particularly in the area of local rules since its formation in 1997. The committee is scheduled to meet next in Spokane on October 22, 1999. Anyone desiring to have a matter placed on the agenda may do so by contacting any member of the committee, or by notifying Ted McGregor, Clerk of the Court, by either Fax (509-353-2417), or by letter (PO Box 2164, Spokane, Washington, 99210). A roster of the members is also available on the website.

Pat Morrissey of Wenatchee has been chosen to replace Rick Hayden, who has served since 1997 as a Creditor-Consumer representative.

The co-chairpersons of the committee are Chief Judge Williams and Gary Farrell, who is the chairperson of the Bankruptcy Bar Association.

Standing Chapter 13 Sub-Committee

Chapter 13 cases account for approximately18% of all cases filed in the district, and the numbers have been increasing. The Clerk's Office reports that approximately 40% of the documents filed with the court are related to chapter 13 matters. The court and the chapter 13 office are very interested in insuring that the chapter 13 program is as efficient and responsive as possible. Regular meetings and discussions with users is seen as an opportunity to help achieve this goal.

With this in mind, the court's Standing Advisory Committee established a Standing Chapter 13 Sub-Committee to serve as a source of advise and comment to itself as well as the court and the trustee's office concerning chapter 13 matters. Judge Rossmeissl and Dan Brunner will serve as co-chairpersons; the other members are Jan Armstrong, Erik Bakke, Denny Colvin, Tim Durkop, Rick Hayden, Nancy Isserlis, Ian Ledlin, Ted McGregor, Jake Miller, Dan Morgan, Dan Radin, and Chuck Zeller. A complete roster with names, addresses and contact numbers is available on the court's website at www.waeb.uscourts.gov.

Anyone wishing to bring a matter to this committee's attention may do so by contacting any member of the committee or Ted McGregor by Fax (509-353-2417) or letter (PO Box 2164, Spokane, Washington, 99210). The next meeting of this committee is set for October 4, 1999 by telephone conference.

Summit Committee Addresses Chapter 13 Confirmation Issues

In 1997 a group was established that became known as the Chapter 13 Summit Committee to deal with a concern that a rather sizeable number of unconfirmed Chapter 13 cases was being created. Statistics indicated that in 1997 there were over 1,017 chapter 13 cases pending in which plans had not been confirmed, a situation that was dubbed a "backlog." Additionally, the number appeared to be increasing.

The cause of this "backlog" was thought to be threefold: an increase in the number of chapter 13s filed, a change in the local rule which required the use of a form plan, and a change in the practice of requiring an actual confirmation hearing in each case, whether or not there were any objections raised to the confirmation.

Since its formation, the Summit Committee met many times. All parties assisted; attorneys, the United States Trustee, the judges and most importantly the Chapter 13 office. The statistics for 1998 disclosed that the overall number of cases filed in which plans were not confirmed had been reduced to 626. Although there has been a gradual rebuilding of the backlog, the backlog is not being experienced in the older cases. The Summit Committee performed admirably and accomplished a very difficult task. The Summit Committee at its last meeting chose to let itself be assimilated into the newly formed Standing Chapter 13 Sub-Committee.

Court To Get Tougher In Chapter 13 Area

Chapter 13 filings are increasing as is the general workload of the judges. The judges are hoping that more progress in having cases ready for confirmation can be accomplished by greater cooperation and communication by the interested parties, rather than relying upon judicial involvement to move the process. It is expected that the parties in a Chapter 13 case will take advantage of every opportunity to confer early with the trustee's office and other parties to an issue so that they can be resolved whenever possible without judicial involvement. Presently, it appears that at least two hearings seem to be required for each confirmation of a plan. It is hoped that by being more pro-active in addressing issues, the vast majority of cases will require only one hearing, either contested or uncontested, for confirmation or other dispositive resolution.

Application for Compensation Revised

The process of awarding compensation for services and reimbursement of expenses from Bankruptcy estates has been the subject of an intense review by the court's Standing Advisory Committee as well as significant re-drafting of the various local forms, largely by the Fees Sub-Committee of the Advisory Committee. As a result of their efforts, the judges have approved changes to the process by which fee applications are prepared and reviewed. The purpose of the changes is to streamline the process so that applications can be reviewed thoroughly and fees awarded promptly. Payments of administrative expenses from estate property are only able to be paid after award by the court.

Generally, all applications are subject to two reviews before presentation to a judge for consideration: First, substantive review by either the chapter 12 or 13 trustee or the United States Trustee, and secondly by the Clerk's Office for procedural correctness. Under the new procedure, a form Order Awarding Compensation for Services Rendered and Reimbursement of Expenses Incurred (LF 2016D) will be used and will require the endorsement of the reviewing trustee. Once the endorsed proposed order is presented to the court, the Clerk's Office will provide the second review for procedural correctness.

The Application Form (Local Form 2016) is designed to provide basic information. More detailed information will be provided by other local forms (Local Forms 2016A, B & C) on a case to case basis dependent on the nature of a particular application. Copies of the new forms are printed in this issue of NOTES and are also available on the court's website as well as from the Clerk's Office. Accurate record-keeping is essential so that fee applications can be substantiated; proper use of the prescribed forms will assist in fees being approved as quickly as possible.

From the Clerk cont'd

Except for certain limited exceptions in Chapter 13 cases, LBR 2016-1(a) requires 20 days notice and hearing be given to the Master Mailing List of applications for awarding of administrative expenses. Simultaneous with the giving of the notice, it is suggested that the applicant provide to the reviewing trustee the original proposed Order Allowing Compensation and Reimbursement of Expenses (Local Form 2016D) for review and endorsement, along with copies of the Application (Local Form 2016) and related forms. Applicants are encouraged to respond to inquiries by the reviewing trustee as quickly as possible so that the review process can be expedited. Failure to provide complete information or in an incorrect format likely will result in delay. If the proposed order is endorsed, it can then be sent to the court for the procedural review and presentation to the court for consideration. If the trustee refuses to endorse the proposed order, the trustee can be expected to file an objection to the application and the applicant would need to schedule a hearing.

It should be noted that the vast majority of applications for award of compensation are dealt with on an ex parte basis following review. It is expected that the revised process, particularly with the introduction of the various local forms, will allow the trustee to complete the substantive review within the time allowed for objections.

Income Directives In Chapter 13

The judges of the court have approved changes to the Chapter 13 Plan (Local Form 2083) and the Plan Payment Declaration (Local Form 2083A) as necessary to bring these forms in line with a previously adopted change to LBR 2083-1(p) concerning income directives. The use of income directives in Chapter 13 has proven to be most important to the successful completion of plans. The form now facilitates the rule that allows the trustee to present an order based on a plan at any time after a case is filed, either before or after a plan is confirmed. Copies of the revised forms Local Form 2083 and 2083A are available over the court's website or from the Clerk's Office. A copy of the revised plan and plan payment declaration are reprinted in this issue of NOTES, and are also available on the court's website *www.waeb.uscourts.gov* or from the Clerk's Office.

Judge Williams New Chief Judge

On June 8, 1999 Judge Patricia Williams was elevated to the position of Chief Bankruptcy Judge for the Eastern District of Washington. She succeeds Judge Rossmeissl who served in that position since June 1994. The Chief Judge is appointed by the United States District Court and generally holds the position for a five-year term. The duties include the oversight of all court operations, and thus the Clerk of Court most often meets with and keeps the chief judge informed of activities in the Clerk's Office. The Chief Judge attends various meetings outside the district, and serves on the Chief Bankruptcy Judges Liaison Committee of the Ninth Circuit. The Chief Judge is also the co-chairperson of the Bankruptcy Court's Standing Advisory Committee.

Notice And Hearing Tables

The Notice and Hearing Tables are available on the court's website *www.waeb.uscourts.gov*. These tables have been in use for many years in this court and are a summary of the notice requirements for most of the kinds of actions initiated in the court. When proposed orders are reviewed by the court's Case Administrators for compliance with the rules, these are the tables that are used. Form AD08, a copy of which is found with the tables, is the form used in this review. Should a proposed order need to be returned to the presenting party for administrative or procedural incorrectness, it will be attached to a completed copy of Form AD09 appropriately annotated so the presenter can better understand why the proposed order was returned unsigned.

Common problems that can cause a proposed order to be returned or slow the process are:

Insufficient objection time provided. Unless otherwise provided, the normal proscribed period for filing objections to a notice is 20 days; if the notice is mailed, an additional three days is added to the prescribed period pursuant to FRBP 9006(f). The notice should make the prescribed period clear. A notice that includes the three days with the prescribed period might be viewed as only extending the prescribed period. A notice that ties the prescribed period to the date of the notice should insure that in fact the notice is mailed on that date since a delay in mailing would inappropriately shorten the prescribed period.

Failure to adequately describe property or value involved. A rule that calls for a description of property, such as LBR 4003-2 Avoidance of Liens, is generally not satisfied by too much generality. Household goods without further description or explanation is usually not adequate; some breakdown of the specific items is more appropriate.

Improper notice or service. Certain notices are required to be sent pursuant to FRBP 7004 or FRBP 9014. FRB 7004 sets out very specific requirements as to proper service on various entities. If FRBP 7004 service is required, as it is for avoidance of liens, objections to proofs of claim, or Valuation of Collateral, then close attention needs to be paid to how the notice is served.

Alternate Dispute Resolution

At its last meeting, the Court's Standing Advisory Committee appointed an Alternate Dispute Resolution (ADR) Sub-Committee for the purpose of developing a local rule on Alternate Dispute Resolution. The members of the committee are Chief Judge Williams, attorneys Tom Bassett, Bonnie Charney, Jean Campbell and Jim Hurley. They are presently examining related rules and general orders from other courts and are expected to present a draft ADR rule to the Advisory Committee at its October 22, 1999 meeting. The impetus for this undertaking was a federal statute that mandated that each District Court adopt at least one form of alternate dispute resolution. Although the statute seems not be directed at Bankruptcy Courts, establishment of a mediation program is being pursued. The sub-committee at its last meeting discussed various mediation thoughts with Oregon Bankruptcy Judge Perris. The Oregon Bankruptcy Court has an ADR rule and is presently involved in a pilot program that is focused on providing assistance to pro se debtors. A report of the meetings of the ADR Sub-Committee are available on the court's website.

Stats Disclose Changes In Filing Patterns

Filings in the district for both main cases and Adversary Proceedings 1999 are within 1% of the filings for the same period in 1998. 1998, however, was the all-time record year for case filings at 7,795. As of August 30, 1999, 5,196 cases have been

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From the Clerk cont'd

filed; for the same period in1998, there were 5,260. Chapter 13 filings have been steadily increasing; in 1996 Chapter 13s accounted for 15% of the cases filed, 1997, 16.4%, 1998, 17% and for the first six months of 1999, 20%. In real numbers, that is an increase from 867 cases in 1996 to a projected 1,620 for 1999.

Another interesting statistic is the dramatic change in where in the district Chapter 13s are being filed. The district, for statistical purposes, is divided into five geographic areas; Spokane, Yakima, Tri-Cities, Moses Lake and Wenatchee. In 1996, 56% of all Chapter 13s were filed in Spokane, 11% in Richland, 26% in Yakima, 2% in Wenatchee and 5% in Moses Lake. For the first six months of 1999, only 39% of the Chapter 13s were filed in Spokane, with Yakima filings accounting for 46% of the filings; the percentages for Richland, Wentachee and Moses Lake remained the same.

In response to this change, Chapter 13 cases filed in Richland, Wenatchee and Moses Lake, as well as Spokane will now generally be assigned to Judge Williams; Judge Rossmeissl will continue to be assigned Yakima cases. Meetings of Creditors locations will be unaffected by this.

Top Ten Reasons To Use The Court's Website

In 1997 the court undertook an imaging program whereby all documents filed in the court were scanned into court imaging equipment and made available for viewing and downloading over the internet via the court's website at *www.waeb.uscourts.gov.* In addition to the 20,000 cases filed since1997, amounting to some 1.5 million documents, other information is also available such as local rules and forms, general orders, master mailing lists, T-bill rates, reports from various committees and some otherwise unpublished opinions of the judges. The internet site has been recording approximately 3,000 hits per business day. Access is available 24 hours a day, 7 days a week, weekends and holidays included. If you aren't convinced or at least curious to "surf" our web, the following top ten reasons should persuade you:

10 -Clients are impressed when you have immediate access to court information;
9 - You can get copies, including master mailing lists, anytime and anyplace, even in your jammies from home;
8 - It's $heaper and Quicker;
7 - You can impress your partners and friends as an Internet Guru;
6 - Rather than receiving "filed" copies, you can actually "see" your document in the file;
5 - Keep abreast of the latest opinions of the judges;
4 - Save yourself from the embarrassment of not being aware of the latest Local Rules;
3 - Download local forms;
2 - See all claims information as to who filed, what, where and when;
1 - The judges use it.

Y2K Update Information

On September 8, 1999 the Court's computer network underwent formal comprehensive testing of hardware, software, and support services for compatibility with Year 2000. This was accomplished by advancing the dates of the court's computers to February 29, 2000. In preparing for this test, a great deal of review, inspection, upgrading and patching of operating systems, applications, hardware and software was done to reduce the likelihood of failures of core systems and services. Once the dates were advanced, court personnel exercised the various programs with both real and test data. The court's two principal public access systems, VCIS and RACER were not included in the test so as to not unduly disrupt access to court information, however, RACER, which is a program provided by an outside source, is reported as Y2K compliant and a new version of VCIS will be introduced before the year 2000. The test also included a Y2K version of NIBS, the court's basic operating system.

The results of the test disclosed that no failures related to dates or date functions occurred within the court's networks nor were any caused or reported by any external entities that accessed the court's network as a result of the advance to the year 2000. However, the need to update various supporting programs was discovered, which now will be addressed by the court's automation staff.

Although the test provides reason for confidence that the court's automation systems will enter the year 2000 with little if any disruption, it should be noted that the court does provide a great many public services which could conceivably appear to be malfunctioning as a result of user systems or outside providers not being "Y2K ready." There are many applications with patches or upgrades available and it may well be in the court users' best interest to ensure that their own systems are Y2K ready.

RACER Classes

HOW TO USE RACER (Rapid Access to Court Electronic Records) CLASS is taught on the first Tuesday of every month at 1:30 p.m. in the court's computer training room, located on the seventh floor of the U.S. Courts Building, 920 West Riverside. There is no charge for the class, however, reservations are required. Reservations may be made by calling Dianna Cunningham at 353-2404, extension 225. The "hands on" class is taught by court staff and covers the various aspects of RACER, from basic access to the more sophisticated aspects of the system. Also included in the class is information about the other web services made available by the court. The class lasts about one hour.

Reaffirmation Agreement Form Revised

Procedural Form B240 entitled Reaffirmation Agreement has been revised by the Administrative Office of the United States Courts pursuant to FRBP 9009. The revised form incorporates requirements added to the Bankruptcy Code by the Bankruptcy Reform Act of 1994 and also adopts suggestions made in the final report of the National Bankruptcy Review Commission. The use of a procedural form, as opposed to an official form, is not mandatory but strongly recommended. Copies of the form are available from the Clerk's Office or from the court's website. The statutory requirements for reaffirmation agreements are found at 11 U.S.C. 524(c).

Amendments to FRBP to Take Effect December 1, 1999

Changes to various Rules of Bankruptcy Procedure have been sent to the Congress in accordance with 28 U.S.C. 2075 and unless Congress acts, the changes will take effect December 1, 1999. Following is a synopsis of the changes prepared by Judge Adrian G. Duplantier, Chairman of the Judicial Conference Advisory Committee on Bankruptcy Rules. No action by Congress is expected.

(a) Rule 1017 is amended to specify the parties entitled to notice of a United States trustee's motion to dismiss a voluntary

chapter 7 or chapter 13 case based on the debtor's failure to file a list of creditors, schedules, and statement of financial affairs. Currently, all creditors are entitled to notice of a hearing on the motion if it is a chapter 7 case. To avoid the expense of sending notice to all creditors, the proposed amendments provide that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 is governed by Rule 9014. Other amendments are stylistic or designed to delete redundant provisions that are covered by other rules.

(b) Rule 1019 is amended (1) to clarify that a motion for an extension of time to file a statement of intention regarding collateral must be filed or made orally before the time expires; (2) to provide that the holder of a postpetition, preconversion administrative expense claim is required to file a request for payment under 503(a) of the Code, rather than a proof of claim under Rule 3002; (3) to provide that the court may fix a time for filing preconversion administrative expense claims; and (4) to conform the rule to the 1994 amendment to 502(b)(9) and to the 1996 amendment to rule 3002(c)(1) regarding the 180-day period for filing a claim of a governmental unit. Other amendments are stylistic.

(c) Rule 2002(a)(4) is amended to delete the requirement that notice of a hearing on dismissal of a chapter 7 case based on the debtor's failure to file required lists, schedules, and statements, must be sent to all creditors. This amendment conforms to the proposed amendments to Rule 1017 which requires that the notice be sent only to certain parties. This subdivision is amended further to delete the requirement that notice of a hearing on dismissal of a case based on the debtor's failure to pay the filing fee must be sent to all creditors. Rule 2002(f) is amended to provide for notice of the suspension of proceedings under 305 of the Code.

(d) Rule 2003(d) is amended to require the United States trustee to mail a copy of the report of a disputed election for a chapter 7 trustee to any party in interest that has requested a copy of it. Also, the amended rule gives a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute. These amendments and other stylistic revisions are designed to conform to the 1997 amendments to Rule 2007.1(b)(3) on the election of a trustee in a chapter 11 case.

(e) Rule 3020(e) is added to automatically stay for ten days an order confirming a chapter 9 or chapter 11 plan so that parties will have sufficient time to request a stay pending appeal.

(f) Rule 3021 is amended to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case. The other amendments are stylistic.

(g) Rule 4001(a)(3) is added to automatically stay for ten days an order granting relief from an automatic stay so that parties will have sufficient time to request a stay pending appeal.

(h) Rule 4004(a) is amended to clarify that the deadline for filing a complaint objecting to discharge under 727(a) is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. Rule 4004(b) is amended to clarify that a motion for an extension of time for filing a complaint objecting to discharge must be filed before the time has expired. Other amendments are stylistic.

(i) Rule 4007 is amended to clarify that the deadline for filing a complaint to determine dischargeability of a debt under 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. This rule is amended further to clarify that a motion for an extension of time for filing a complaint must be filed before the time has expired. Other amendments are stylistic.

(j) Rule 6004(g) is added to automatically stay for ten days an order authorizing the use, sale, or lease of property, other than cash collateral, so that parties will have sufficient time to request a stay pending appeal.

(k) Rule 6006(d) is added to automatically stay for ten days an order authorizing the trustee to assign an executory contract or unexpired lease under 365(f) so that parties will have sufficient time to request a stay pending appeal.

(l) Rule 7001 is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief when the relief is provided for in a chapter 9, chapter 11, chapter 12, or chapter 13 plan. Other amendments are stylistic.

(m) Rule 7004(e) is amended to provide that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

(n) Rule 7062 is amended to delete the additional exceptions to Rule 62(a) F.R.Civ.P. The deletion of these exceptions - which are orders issued in contested matters rather than adversary proceedings - is consistent with the amendment to Rule 9014 that renders Rule 7062 inapplicable to contested matters. For proposed amendments that provide a new automatic ten-day stay of certain orders, see the amendments to Rules 3020, 3021, 4001, 6004, and 6006.

(o) Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

(p) Rule 9014 is amended to delete Rule 7062 from the list of Part VII rules that automatically apply in a contested matter. Rule 7062, which provides that Rule 62 F.R.Civ.P. is applicable in adversary proceedings, is not appropriate for most orders granting or denying motions governed by Rule 9014. For proposed amendments that provide a new automatic ten-day stay of certain orders so that parties will have sufficient time to obtain a stay pending appeal, see the amendments to Rules 3020, 3021, 4001, 6004, and 6006.

Proposed Changes to Local Rules

The judges of the Bankruptcy Court have approved changes to certain local rules of the court, and those changes are reprinted below for the purpose of allowing public comment, before they are adopted and become effective. The proposed changes are also available to be reviewed over the court's website at *www.waeb.uscourts.gov*. The comment period ends on November 15, 1999. Comments should be in writing and sent to: Clerk, U.S. Bankruptcy Court, Eastern District of Washington, P.O. Box 2164, Spokane WA 99210.

RULE 2016-1
Compensation of Professionals

(b)(2) ~~An application supporting an~~ A proposed ex parte order presented to the court pursuant to LBR 2002 - 1(e) allowing compensation and reimbursement of expenses shall be as prescribed by the appropriate local form and shall contain the ~~an~~ endorsement ~~of no objections by a the Office of the United States~~ of the reviewing trustee.

Clerk's Note:

This change is proposed so as to streamline the review process of applications for orders allowing compensation and reimbursement of expenses. The present rule requires that the application contain the endorsement of the United States trustee. Changes in the policy of the Office of the United States trustee

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From the Clerk cont'd

provide that the United States trustee will review routinely only applications in Chapter 7 and 11 cases; the review of applications in Chapters 12 and 13 are now accomplished by the respective standing trustees.

The application and supporting documents are required to be filed and served in accordance with LBR 2016 - 1(b)(3). The proposed order, which under the rule would be a prescribed local form, would be submitted with copies of the application and supporting documents, to the appropriate trustee for review and endorsement. It is anticipated that the review would be accomplished within the notice period of twenty (20) days as set out in LBR 2016 - 1(a). Should the reviewing trustee either object to the entry of the order or otherwise not endorse the order, a request for a hearing in accordance with LBR 9073-1 would be appropriate.

RULE 3001 - 1
Claims & Equity Security Interests - General

~~a) Number of Copies~~
~~In addition to the original proof of claim, in a case under Chapter 12 or 13 a copy thereof shall also be filed.~~

~~(b)~~(a) Post Petition Claims
A claimant who files a proof of claim for a claim against the debtor that arose after the date of the order of relief shall serve a copy of the proof of claim on the debtor's attorney or debtor, if unrepresented.

~~(c)~~(b) Tardily Filed Proof of Claim
A claimant who files a proof of claim after expiration of the time fixed for the filing of proofs of claim shall serve a copy thereof on the debtor's attorney or debtor, if unrepresented.

~~b) Conformed Copy of Proof of Claim~~
~~A claimant who wishes a conformed copy of a filed proof of claim must submit an extra copy. A conformed copy of the proof of claim will be returned by mail only if the claimant has provided a pre-addressed, stamped envelope.~~

~~(c)~~(c) Claims in Chapter 11
(1) In a Chapter 11 case, any creditor or equity security holder whose claim or interest is not scheduled or is scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within ninety (90) days after the first date set for the meeting of creditors.
(2) Claims "deemed filed" in a Chapter 11 case pursuant to 11 U.S.C. 1111(a) shall be deemed filed only so long as the case remains in Chapter 11. If the Chapter 11 case is converted, an actual proof of claim must be filed.

Clerk's Note:

Sub-paragraph (a) of this rule is abrogated. This change would eliminate the necessity of filing a copy of proof of claim filed in chapter 12 and 13 cases, and recognizes the fact that all proofs of claim are imaged by the court and available to the trustees via the internet.

Sub-paragraph (d) is abrogated. LBR 5005-1(b) provides for receiving conformed copies, and this sub-paragraph is redundant of that rule.

The sub-paragraphs of the rule are re-numbered.

Rule 3007 - 1
Claims - Objections

(a) Objection
(1) An objection to the allowance of a claim shall include the following:
(A) Notice that if the claimant fails to timely file a written response that:
(i) the court may rule on the pleadings filed without oral argument and without further notice to the claimant; and
(ii) that the claimant will be deemed to have consented to such a determination by the court in accordance with LBR 3007(b)(2)(B);
(B) The specific date by which a response is considered to be timely filed; and
(C) an affidavit or unsworn declaration ~~statement~~ under penalty of perjury that clearly sets forth the basis of the objection sufficient to overcome the prima facie effect of the proof of claim pursuant to FRBP 3001(f). ~~Notice of an objection to allowance of a claim shall be served on the trustee, debtor, debtor's attorney and claimant. The party objecting to a claim shall note the matter for hearing or present an ex parte order, as appropriate~~.
(2) The objecting party shall serve a copy of the objection, along with the affidavit or declaration and the notice as required by subparagraph (a)(1) of this rule, on the claimant, debtor, debtor's attorney and the trustee. Service of the Notice of Objection shall be in accordance with FRBP 7004 and 9014.
(3) If the objection requires the determination of the value of a claim secured by a lien on property in which the estate has an interest, the objecting shall also comply with LBR 3012-1.

(b) Response
(1) Response Filed
(A) If the claimant files a written response to the objection, the claimant shall serve a copy of the response on the objecting party and the trustee.
(B) Upon the filing of a response, the court will promptly set a hearing and provide notice of the date and time set for the hearing to the objecting party, the claimant and the trustee. The hearing shall be conducted unless the objection is resolved prior to the hearing by a stipulated order or withdrawal of the objection.
(2) No Response Filed
(A) If no response is filed, the objecting party shall, within thirty (30) days of the expiration of time to timely file a response, present an ex parte order, based on the objection and supported by an affidavit or unsworn declaration under penalty of perjury that the objection was filed and served in accordance with sub-section (a) of this rule and that no response was filed or served.
(B) Failure by the claimant to file a response shall be deemed as consent to have the court consider and determine the issue on the pleadings without oral argument.

(c) Striking of Objection
Should the objecting party fail to timely present an order on the objection in accordance with sub-paragraph (b)(2)(A) of this rule, the trustee or any party in interest may, on five (5) days notice to the objecting party, request that the objection be stricken.

(d) Hearing
Notwithstanding sub-paragraph (b)(2) of this rule, any party in interest may request a hearing in accordance with LBR 9073-1.

(e) Adversary Proceeding
If a demand for relief of the kind specified in FRBP 7001 is joined with an objection to claim, it shall be accompanied with an Adversary Proceeding filing fee, as applicable, an Adversary Proceeding Cover Sheet and, unless the party against whom relief is demanded is the debtor or a party that has filed a proof of claim, a form summons as required by LBR 7003-1.

Clerk's Note:

The changes suggested were prompted by a concern that objections to proofs of claim were not being resolved in a timely manner and concern that these unresolved issues would create more work and uncertainly if not dealt with in a positive manner, most particularly in the Chapter 13 area. All members of the Advisory Committee seemed to be in agreement with this basic concern, however, how best to achieve the desired result has been the topic of several meetings and substantial discussion.

The first issue of whether or not service of the objection sent to the claimant at the name and address provided on the proof of claim, and not in accordance with FRBP 7004 and 9014, seems to have been resolved principally by the case of In re LEVOY reported at 182 B.R. 827 (9th Cir. BAP, May 17, 1995) in which the court found that although filing a proof of claim constituted submission by the claimant to the jurisdiction of the court, due process required service of an objection to a properly filed proof of claim be done in accordance with FRBP 9014, since the filing of an objection to a proof of claim was a "contested matter."

The second issue was whether or not FRBP 3007 required that notice of the objection include specific information as to the time and date of the hearing. A Clerk's study [1] indicated that such a requirement would result in the scheduling of large number of unnecessary hearings. In addition, it would run counter to the historic practice in this district to initiate this type of matter upon "notice and hearing". The proposed rule avoids the scheduling of unnecessary hearings while assures prompt scheduling if a response is filed. It also is comparable with the general "notice and hearing" practice established in the district while assuring that the court rules on each and every objection to claim. The proposed rule would provide an opportunity for the claimant to file a response to an objection, but if the claimant did not file a response, then the objection would be heard on the record but without oral argument. The rule would allow but not require a response, and would provide a judicial determination of each objection based on the documents filed, even if no oral hearing were conducted. It would also provide that any party could request an oral hearing, even if no response was filed.

The rule also would provide that a hearing would be set by the court without further action on the part of the claimant or the objecting party only when a response was filed. Requests for hearings, presentation of ex parte orders or motions to strike objections, would be left to the parties where no response were filed.

The rule would also provide authority for any party in interest to move to have an objection to a proof of claim stricken on short notice.

To craft a rule that would have the court set a hearing based on the filing of a response would not impose much of a burden. To set a hearing based on the filing of an objection to a proof of claim would be more time consuming, but most likely would result in very few additional hearings. As the change to the rule is now suggested, objections without responses would be heard without oral argument upon submission of an ex parte order. Failure to submit a timely order resolving the matter may result in the striking of the objection upon motion by any interested party.

The strength of the changes to the rule is that it requires a better notice to the claimant of options available, provides time frames for events, replaces the old "objection to an objection" language with a "response to an objection" and provides a fairly summary procedure for the trustee in cases in which no action is taken. The down side is that there is some additional work on the part of the court.

RULE 3012 - 1
Valuation of ~~Collateral~~ Security

(a) ~~Service of~~ Motion
~~Any party in interest may make a~~ A motion to determine the value of a claim secured by a lien on property in which the estate has an interest may be by separate motion or may be included in an objection to the allowance of a claim made pursuant to LBR 3007-1.

(b) Service
(1) Service of the notice shall be made on ~~after~~ twenty (20) days notice and hearing:
(A) to the master mailing List pursuant to LBR 2002 - 1; and
(B) to the trustee and any ~~Service on the~~ holder of a lien to be valued as required by ~~shall be in accordance with~~ FRBP 9014 and 7004.
(4) In the case of Chapter 13, notice need only given as required by sub-section (b)(1)(B) of this rule.

(c) Content of Notice
(1) The notice of this motion shall contain the following information:
(A) a description of the property to be valued;
(B) the value ~~the movant intends to~~ placed on the property ~~if no objection is made~~ by the moving party;
(C) the names of all holders of liens ~~creditors asserting secured claims~~ in the property; and
(D) with respect to each holder ~~secured claimant~~;

[1] Statistical data gathered in Chapter 13 cases for the month of June 1999 would indicate that there were 1567 proofs of claim filed, 94 objections to proofs of claim filed, and 8 responses to objections filed. Prior statistics gathered for the month of November 1998 disclosed 1550 proofs of claim filed, 70 objections and 8 responses. Looking at the percentage of objections to proofs of claims in relation to proofs of claim, the figure is about 5%. What has not been tracked until June have been responses to objections. For the two months which we did track, November1998 and June 1999, the numbers were 8 in each month.

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(i) the amount placed on each holder's interest by the moving party ~~which the movant intends to place on the creditor's claim if no objection is made~~;

(ii) the priority in the property ~~which the movant intends to~~ attributed to each holder's interest by the moving party ~~the creditor's claim if no objection is made~~; and

(iii) whether the holder's interest is to be treated ~~whether the movant intends to treat the creditor's claim~~ as fully secured, under-secured or unsecured.

Clerk's Note:

Sub-paragraph (a) makes clear that a motion made under this rule may be either made separately, or included with an objection a proof of claim.

Sub-paragraph (b) (2) limits service of the notice of the motion in a Chapter 13 case to the trustee and any lien holder.

Sub-paragraph (c) only makes grammatical changes.

Rule 4003-1
Lien Avoidance

(a) A party seeking to avoid a lien pursuant to 11 U.S.C. 522(f) shall give fifteen (15) days notice to the trustee and the creditor holding the lien in accordance with LBR 2002-1.

(b) The notice and motion shall contain:

(1) a description and statement of the value of the property encumbered as if there were no liens on the property;

(A) a description and the amount of the lien to be avoided;

(B) specific identification of the statutory authority for avoiding the fixing of the lien; either a judicial lien or a nonpossessory, nonpurchase-money security interest;

(C) a description and the amount of all other liens on the property, individually identified as to each lien holder, and a statement whether any such liens have or are subject to being avoided under this rule, or a statement that there are no other liens;

(D) a statement as to the specific statutory exemption claimed and the amount of the exemption claimed.

(c) Service of the notice on the lien creditor shall be in accordance with FRBP 7004.

Related Provisions:

FRBP 4003	Exemptions
FRBP 9006	Time
FRBP 9014	Contested Matters
LBR 2000-1	Notice to Creditors and Other Interested Parties
11 U.S.C. 522(f)	Exemptions

RULE 5001 - 2
Clerk - Office Location/Hours

(a) Regular Business Hours

The regular business hours of the office of the Clerk will be from 9:00 a.m. ~~to 12 noon and 1:00 p.m.~~ to 4:30 p.m., all days except Saturdays, Sundays and legal holidays as described in FRBP 9006(a).

Clerk's Note:

This simply changes the rule to recognize the practice that was previously adopted whereby the Clerk's Office no longer closes for the lunch hour.

LBR 9018-1
Secret, Confidential, Scandalous, or Defamatory Matter

(a) Motion to Seal

(1) A motion to seal may be made on any grounds permitted by law, shall contain the basis for why sealing is required and shall be accompanied by a copy of the proposed order. Notice of the motion shall be in accordance with LBR 9013-1(b).

(2) Filed simultaneously with the motion to seal shall be the document to be sealed, presented as required by sub-paragraph (b) of this rule. The document shall be filed provisionally under seal, and will remain provisionally under seal until the court rules on the motion.

(3) If discussion of protected materials or information is necessary to support the motion, such discussion shall be limited to an affidavit or declaration under penalty of perjury, which shall also be provisionally sealed.

(c) Filing of Sealed or Provisionally Sealed Document

Any document filed under seal or provisional seal shall be contained in a sealed envelope to which shall be affixed a captioned pleading that identifies the document, contains language to clearly indicate that the document in the sealed envelope has been filed under seal and is not to be opened without an order of the court and that makes reference to the motion or order by which the document was sealed.

(d) Motion to Unseal

A motion to unseal a document may be made on any grounds permitted by law. Notice of such a motion shall be in accordance with LBR 9013-1, with ten (10) days notice to the party that requested the document be sealed.

(e) Disposition of Documents filed Under Seal upon Dismissal or Closing of Case

Any documents remaining under seal when a case is dismissed or closed shall be returned sealed to the filing party.

(f) Viewing by Court Personnel

Unless otherwise stated in the motion or the order to seal, the seal will not preclude court staff from viewing sealed materials.

Related Provisions:

FRBP 9018	Secret, Confidential, Scandalous, or Defamatory Matter
FRBP 9013	Motions: Form and Service
LBR 2002-1	Notice to Creditors & Other Interested Parties
LBR 9013-1(b)	Motion Practice
11 U.S.C. 102	Rules of Construction
11 U.S.C. 107	Public Access To Records

Clerk's Note:

This rule is new and would provide a procedure for parties to follow who wish to have the documents sealed pursuant to FRBP 9018. This rule is considered to be particularly necessary since the court now images all documents filed which are now available over the internet.

Case Notes

From Judge Williams:

Frye, Michael & Gayle v. Hughes, Cheri, A98-0173-W1R (Bkrtcy. E.D. Wash. 1999). The Motion for Summary Judgment in this adversary proceeding presented the following issue: Does the doctrine of collateral estoppel (more accurately referred to as "issue preclusion") require this court to conclude that the defendant engaged in fraudulent conduct?

The court referenced 28 U.S.C. § 1738 which provides that state judicial proceedings are to be given full faith and credit by federal courts and determined that, assuming other elements of collateral estoppel are met, arbitration awards can preclude re-litigation of factual and legal issues. A state court's confirmation of an arbitration award is a final judgment of the state court and entitled to full faith and credit. As the next step in the analysis, federal court must look to the law of the state in which the judgment was entered to determine whether collateral estoppel applies.

One element required by state law is that the legal issues presented in the two proceedings are identical. "Actual fraud" in § 523(a)(2)(A) refers to common law fraud. The elements of fraud under state law are set forth in *Stiley v. Block,* 130 Wn.2d 486 (1997) and *Farrell v. Score,* 67 Wn.2d 957 (1966). Nondischargeability of debt under § 523(a)(2)(A) due to debtor's/defendant's false representation or actual fraud is the same as the legal issue in the state court proceeding, *i.e.* did the defendant make false representations or engage in fraudulent conduct. Satisfaction of all of the elements of common law fraud under Washington law should satisfy all of the elements required for "false representation or actual fraud" under § 523(a)(2)(A). If the other elements of collateral estoppel are met, the state court's conclusion that the defendant's actions constituted false misrepresentation and/or actual fraud under state law would also constitute grounds for non-dischargeability under § 523(a)(2)(A).

In order to apply collateral estoppel under Washington law, application of the doctrine must not work an injustice. Part of this analysis requires a determination of whether the issue was actually litigated in the prior proceeding.

Without findings of fact or conclusions of law or some other record of the basis of the final award, the federal court cannot determine if the issue of fraud was actually litigated or constituted the basis of the award.

The arbitration award dated May 20, 1998 merely states "For plaintiff in the sum of $30,000." The state court confirmed the award and entered judgment October 16, 1998. Neither the confirmation or judgment entered by the state court made any reference to fraud. The declaration of the arbitrator filed five months after the award on September 28, 1998 stated "plaintiff has proved all of the elements of fraud required under Washington law" and "The defendant had committed fraud."

In confirming the award and entering judgment, the state court disregarded the declaration of the arbitrator. The state court did not include the declaration or any of its findings in its confirmation or judgment. As neither the original award or the state court's confirmation or judgment included any reference to the basis of the award, the federal court cannot determine the basis of the award. Collateral estoppel does not apply.

In re Carol Kessi, No. 98-05446-W13 (Bkrtcy. E.D. Wash. 1999). The issues in this Chapter 13 plan confirmation were the feasibility of the plan and whether the value of the property to be distributed to the secured creditors was less than the amount of the allowed secured claims under § 1325(a)(5)(B). The issue in the concurrent motion to lift stay was whether the secured creditor was adequately protected.

The divorce decree between the debtor and former spouse provided that the debtor had a 50% interest in the former family home, the ex-spouse a 40% interest, and the adult children a 10% interest. The waterfront home located in Bellevue had been appraised at $1,900,000. The first position secured creditor had a lien of approximately $500,000 with additional inferior liens of approximately $200,000. The debtor at the time of the hearing was self employed and living in Pullman. The property had been listed for sale for $1,800,000 and was being actively marketed.

In response to the first lien holder's motion to lift stay, the court held that the creditor was adequately protected due to the equity in the former home. Additionally, the creditor had rights against the former spouse who had been ordered in the divorce proceeding to pay one half of the monthly payments. Debtor was required to maintain insurance, pay current taxes and keep the property in repair from the rental income generated by the property. Any excess rental income was to be devoted to the plan.

The proposed plan provided for disposable income of $315 per month to be devoted to the plan which was initially to be distributed to priority tax creditors. The plan also proposed that the debtor sell the property within three years and pay creditors in full, but make none of the monthly payments due the lien holders. Admittedly, the debtor had no ability to make the required monthly payments. The court declined to confirm the debtor's plan.

As the property was not at the time of filing the debtor's principal place of residence, pursuant to § 1322 (b) (2), the debtor could modify the rights of the lien holders on the property. The plan was feasible as a Chapter 13 allows a partial liquidation and the monthly plan payments would be distributed to priority tax creditors. However, § 1325(a)(5)(B) contains a reasonableness requirement and depriving the lien holders of a stream of payments for a maximum of three years pending sale was not reasonable. It would be reasonable under the circumstances of the case to allow the debtor approximately 15 months from the time of the hearing to market the property, *i.e.* the two prime selling seasons of the summer of 1999 and 2000. Due to the lack of a payment stream, it was likely that the lien holders would not be receiving the equivalent value of their secured claims if the claims were not paid by that time.

Sharp, Patricia et al. v. LaCaze, Fred et ux, No. A98-0098-K1G (Bkrtcy. E.D. Wash. 1999). In this adversary proceeding which is still pending, the plaintiffs alleged that the defendant is a bankruptcy petition preparer as defined in § 110 of the Code. Subparts (b)(1) and (c)(1) of § 110 require petition preparers to sign and place an identifying number on each "document for filing." The defendant had signed each bankruptcy petition as a bankruptcy petition preparer, but plaintiffs argued in a summary judgment motion that the statement of affairs, schedules and other initial pleadings each constituted a "document for filing." Plaintiffs sought the imposition of fines for the failure to comply with subparts (b)(1) and (c)(1).

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Case Notes *cont'd*

The court cited several cases on the issue and noted that there was a split of authority as to what constitutes a "document for filing" under § 110. *Brokenbough*, 197 B.R. 37 (Ohio Bankr. 1996) determined that as each of the initial pleadings in the case were docketed by the clerk of the court as a single entry and as a single document, the singing of the petition was sufficient. Other cases such as *Hartman*, 208 B.R. 768 (Mass. 1997) have concluded that each of the Official Forms prescribed by the Judicial Conference constitute separate documents under § 110 (b) and (c).

The court determined that the *Hartman* line of cases were the more persuasive authority and ruled as a matter of law that the "document for filing" which must be signed by a petition preparer is each of the Official Forms, *i.e.* the petition, statement of affairs, application to pay filing fee in installment, declaration concerning schedules and any Statement of Intention.

Trial was scheduled on the other issues in the adversary proceeding. The matter has since settled.

Lee, James v. Rhei, Laurie, No. 97-00245W1R (Bkrtcy. E.D. Wash. 1999). Plaintiff in this adversary proceeding sought a determination of non-dischargeability pursuant to 11 U.S.C. § 523(a)(15) for an obligation plaintiff was ordered to pay defendant as a result of a Decree of Dissolution entered May 16, 1995 in Stevens County, Washington. Section 523(a)(15)(A) is the "ability to pay test" and (B) is the "detriment test." *In re Jodoin*, 209 B.R. 132 (BAP 9th Cir. 1997) states that the debtor has the burden to present evidence and the burden of proof. The debtor need only meet either test. The tests are to be applied as of the date of trial, but the court held that the debtor's and former spouse's prospective income was relevant under the detriment test. The starting point to applying the legal test under either § 523(a)(15)(A) or (B) is the disposable income of the debtor. *Jodoin, supra,* and *Greenwalt v. Greenwalt*, 200 B.R. 909, (Bankr. W.D. Wash. 1996).

Under § 523(a)(15)(A), the disposable income test includes household disposable income, not just the debtor's income. It does not matter if child support technically belongs to the children or the debtor. Under bankruptcy law, it is all income of the household, including income from non-married meretricious relationships, roommates or pension payments.

The original Schedule "I" filed at the commencement of the case showed gross income of $3,084 per month which had increased at the time of trial. The original Schedule "J" showed expenses which were simply too high. Schedule "J" demonstrated that there was disposable income. The court did a factual analysis of the specific expenses involved.

Under § 523(a)(15)(B), the court must consider the totality of the circumstances. Applying the detriment test, it was determined that the bankruptcy filing was an attempt to avoid the effect of the divorce decree which the debtor had agreed to and which the state court had refused to vacate at debtor's request. Detriment to the plaintiff's former husband from paying obligations assessed against him in the decree was greater than that to the debtor. Debtor's life style, although not luxurious, was quite comfortable and the only reason the debtor had been able to maintain that quite comfortable life style was the fact that the debtor had not paid her former husband as required by the decree. The former husband voluntarily quit his job, but that was due to serious health problems. In order to pay the obligations assessed to him in the decree, the former husband had to withdraw from his retirement fund leaving him insufficient financial resources for the future. The fact that the debtor did not pay the $7,000 awarded to the former husband had enabled her to place funds in accounts for her children's future needs. Under a totality of circumstances test, the former husband should not be left in his current position while the debtor avoided her obligation to him.

The court ruled that the debtor had failed to meet the burden of proof under § 523(a)(15)(A) or (B) and the debt was not dischargeable.

In re Shelter Dynamics, No. 98-06610-W11 (Bkrtcy. E.D. Wash. 1999). This Chapter 11 was filed on November 2, 1998. On December 3, 1998, a motion to assume lease was filed which did not attach the lease or refer to any specific terms of the lease. The motion stated that the lease was current and debtor could continue to perform. The landlord did not object to the assumption. It was disputed whether the lease was in default at the time of the motion, but default had clearly occurred before the objection period had passed. The order assuming the lease was entered on January 11, 1999. On June 30, 1999, the lease expired by its terms and the debtor vacated the premises.

A few months later, the debtor filed a motion to sell certain assets and pay a particular amount to the landlord from the sale proceeds. The landlord objected and argued that the amount due under the lease was significantly greater and also filed a motion to approve that amount as an administrative expense. The debtor argued that the value of the lease, *i.e.* the benefit to the debtor of the continued occupancy, was $600 per month due to post-petition changes in the debtor's use of the premises. Section 503(b) required the calculation of the administrative expense based upon the benefit to the estate and not the rental amount in the lease. Debtor held discussions with the creditor before and after the assumption offering to pay rent in the amount of $600. Creditor argued that it was entitled to an administrative expense calculated based solely upon the rental amount required in the lease, $1,500 per month. (There was a dispute between the parties as to the actual amount required by the lease due to conflicting interpretations of lease language and this issue was ultimately settled.)

The court ruled regarding the test for the calculation of the administrative expense as a matter of law. Section 502(g) provides that claims arising from rejected leases are to be allowed as general unsecured claims. This infers that claims arising from assumed leases are to be treated differently. Section 365(g) states that the debtor's rejection of a lease constitutes a breach of the lease and § 502(b) limits the damages from the claim which arises upon rejection of the lease. There are several cases involving the question of whether "future rents" (those which accrue after the rejection of an assumed lease) constitute administrative expenses and are subject to the limitation in § 502(b). The decisions are split.

The Ninth Circuit in *Frontier Properties*, 979 F.2d 1358 (1992) held that when a previously assumed lease is rejected, all of the liabilities arising from the rejection, not just those which benefitted the estate, are entitled to an administrative expense priority. Part of the rationale for such holding is that the order allowing an assumption is based upon a finding that the lease, with all its assumed terms, benefits the estate. *Klein Sleep Products v. Costich*, 78 F.3d 18 (2nd Cir. 1996). In the instant case, there was never a rejection of the assumed lease which simply expired by its terms and all rents claimed due accrued during the

Case Review

Watkins v. Peterson Enterprises, Inc.,
137 Wn2d 632, 973 P.2d 1037 (1999).

Editors note: This summary is by Timothy W. Durkop who litigated this case. He was joined at the Supreme Court level by Michael Kinkley.

I once heard an associate of mine tell one of his clients that his case presented an interesting question and that if the client paid him $10,000 he could get an answer to it. Since I represent mostly bankrupt debtors, it is difficult for me to fathom the client who can slap down a $10,000 retainer to get the answer to a complicated legal issue. The reality in many cases is that the issue boils down to this: How much justice can you afford? Few cases are pursued primarily because of the principle of law involved rather than the amount of money involved. *Watkins v. Peterson* comes close.

Watkins involved issues of garnishment costs and attorney fees as they apply to successive writs of garnishment. Because garnishment is far and away the most common method of executing judgments, the issues presented by the case had a profound impact in the policies of all courts in this state. The principles of garnishment law described by the Washington State Supreme Court in *Watkins* are important to any practitioner who regularly attempts to collect debts.

The *Watkins* case was filed in the Eastern District of Washington pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* on November 1, 1996. The case turned on state law garnishment issues and as a result it was certified to the state supreme court. This article covers the resolution of the questions that were certified. Those questions were:

1. If a judgment creditor serves a writ upon a garnishee defendant, and the garnishee defendant answers the writ in a timely manner indicating either that it owes a debt to the judgment debtor or that it holds personal property belonging to the judgment debtor, and the judgment debtor does not controvert the garnishee's answer, may the judgment creditor recover from the garnishee defendant the amount authorized by RCW 6.27.250(1), including the costs listed in RCW 6.27.090(2), if the judgment creditor does not obtain a judgment against the garnishee defendant pursuant to RCW 6.27.250(1)?

2. If a judgment creditor serves a writ upon a garnishee defendant, and the garnishee defendant answers the writ in a timely manner indicating that it does not owe a debt to the judgment debtor and that it does not hold personal property belonging to the judgment debtor, and the judgment creditor does not controvert the garnishee defendant's answer, may the judgment creditor recover from the judgment debtor the costs listed in RCW 6.27.090(2)?

3. If a judgment creditor serves a writ of garnishment upon a garnishee defendant, and the garnishee defendant does not answer the writ in a timely manner, and the judgment creditor does not obtain a default judgment against the garnishee defendant pursuant to RCW 6.27.200, may the judgment creditor recover from the judgment debtor the costs listed in *RCW* 6.27.090(2)?

The facts which gave rise to these questions involved two plaintiffs, Percy Watkins and Diane Bohnet. In the case of Percy Watkins, Peterson obtained a valid judgment and for $386.02 on

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Case Notes *cont'd*

debtor's occupancy of the premises. Consequently, the reasons relied upon in *Frontier Properties* to grant the administrative expense priority to future rents were even more compelling. The landlord was entitled to an administrative expense priority in the amount of the monthly rental set forth in the assumed lease not the value to the debtor of the continued occupancy.

Editor acknowledges with gratitude the work of Judge Williams, Law Clerk Julie Hirsch, and Dee Sindlinger in preparing this synopsis.

From Judge Rossmeissl:

In Re Doherty, 229 B.R. 461 (Bkrtcy E.D. Wash. 1999).

In re Doherty involved a situation where a Chapter 13 case was dismissed prior to confirmation of the plan. At the time of dismissal the Chapter 13 Trustee was holding $9,330 paid by or on behalf of the debtor. After the order of dismissal was entered, but prior to the trustee returning the funds to the debtor, the State of Washington Department of Revenue served the trustee with a Notice and Order to Withhold and Deliver. The Chapter 13 Trustee filed a motion to quash the State's levy and proposed to pay the funds to the debtor after deducting the trustees administrative expenses.

Judge Rossmeissl first determined that the automatic stay terminated with the dismissal of the case. The effect of dismissal is to revest the funds in the debtor subject to the provisions of 11 U.S.C. §1326(a)(2). This section clearly provides that funds paid in during the plan are to be returned to the debtor after deduction of unpaid administrative costs allowed under 11 U.S.C. §503(b). The Court concluded that dismissal did not terminate the court's jurisdiction over the funds. The jurisdiction of the court continues while administrative expense issues and other case closing matters are resolved.

Since the automatic stay was no longer in effect, the State could levy but the levy is not allowed to interfere with the trustee's statutory duties in connection with closing the case. Once the administration of the case is concluded and the trustee is ready to disburse the funds, the question became whether the State's levy primed the debtors claim to the funds. The Court concluded that at this point the Trustee is merely a stakeholder and subject to the States levy.

The moral of the story is if you have an administrative expense claim in a Chapter 13 which is dismissed pre-confirmation you would be well advised to submit the claim immediately upon dismissal. This may be your best opportunity to get paid since the funds may be intercepted by levy before they are returned to the debtor.

Editor acknowledges with appreciation the work of J. Tappan Menard, Law Clerk to Judge Rossmeissl, in providing the above synopsis.

Case Review *cont'd*

April 11, 1996. Thereafter Peterson ran a total of three writs of garnishment. The first writ resulted in no answer from the garnishee defendant. Peterson chose not take a default judgment against the garnishee defendant. The other two writs were answered and the garnishment was concluded by use of a "Pay Order."[1] Peterson collected a total of $658.14 to satisfy the judgment plus garnishment costs and attorney fees from the three writs. My contention was that Peterson could not collect the garnishment attorney fees and costs that resulted from the first writ since it was Peterson's choice not to pursue a default judgment under RCW 6.27.200. These costs totaled $86.80. I also contended that the use of the pay order was not authorized by the RCW 6.27 which meant that the costs collected by use of the pay order should not be allowed.

In the case of Bohnet, Peterson obtained a valid judgment for $537.48 on June 15, 1990. Thereafter Peterson ran a total of six garnishments based on this judgment. No funds were obtained from any of the writs. The answer on the second writ indicated that the garnishee defendant seized funds of $80.47, but those funds were never turned over to Peterson. Funds were held from Bohnet's bank account as a result of the sixth writ, but those were release back to her after a hearing on an exemption claim and objection. Bohnet made payments totaling $841.19 toward satisfaction of the judgment when she was not being garnished. My contention was that Peterson could not be awarded any garnishment costs or attorney fees based on any writ in which the answer indicated that there were no funds seized. As with Watkins, the use of the pay order was not authorized by the RCW 6.27 which meant that the costs collected by use of the pay order should not be allowed.

These issues of law were decided by the garnishment statute RCW 6.27 *et seq.* From my perspective, the $10,000 answer was quite simple: There is absolutely nothing in RCW 6.27 that allows the court or the judgment creditor to change, alter, modify or add to the principle judgment amount. Once judgment is ordered in the principle case, it is fixed in stone, with the exception of the addition of interest. Therefore, the answer to all three certified question is "no."

The only thing that the RCW 6.27 et seq allows is for a judgment creditor to take judgment against a garnishee defendant in certain cases (for purposes of these facts in two cases), those being: (1) When the garnishee fails to answer, RCW 6.27.200; and (2) when the garnishee answers the writ indicating that something has been seized pursuant to the writ, RCW 6.27.250(1).

RCW 6.27.200 states that "it shall be lawful for the court to render judgment by default against such garnishee" and as part of that judgment the court may also award "accruing interest and costs as prescribed in RCW 6.27.090." RCW 6.27.250(1) states that "the court shall render judgment for the plaintiff against such garnishee for the *amount so admitted or found to be due* to the defendant from the garnishee, unless such amount exceeds the amount of the plaintiff's claim or judgment against the defendant with accruing interest and costs and attorney's fees as prescribed in RCW 6.27.090, in which case it shall be for the amount of such claim or judgment, with said interest, costs, and fees." [emphasis added.] In both section the statute specifically addresses the taxing of costs and fees, and states that they are taxed against the garnishee defendant not the judgment debtor.

Peterson contended that the award of costs and fees was automatic upon filing the writ and that garnishment costs and attorney fees are taxed against the judgment debtor as provided by RCW 6.27.090(2). That section reads:

> Costs recoverable in garnishment proceedings, to be estimated for purposes of subsection (1) of this section, include filing fee, service and affidavit fees, postage and costs of certified mail, answer fee or fees, and a garnishment attorney fee in the amount of the greater of fifty dollars or ten percent of (a) the amount of the judgment remaining unsatisfied or (b) the amount prayed for in the complaint. The garnishment attorney fee shall not exceed two hundred fifty dollars.

The Supreme Court, in rejecting this argument as an extremely broad reading of the statute, recognized that garnishment is an "extraordinarily harsh remedy" requiring strict adherence to the statutory procedures and the clear language of the statute. In other words, if its not expressly allowed by the statute, its not permitted. Peterson's practice of taxing garnishment costs and attorney fees against the judgment debtor is not permitted by the statute and therefore was rejected by the court. The use of the "Pay Order" likewise was not authorized by RCW 6.27 *et seq.* and therefore was rejected by the court. The only practice which is authorized is for the court to enter judgment against the garnishee defendant as provided in RCW 6.27.200 or RCW 6.250(2). Any collection of garnishment costs and attorney fees outside of this procedure is not permitted.

When filing *Watkins*, I was troubled by the fact that this was the common practice among judgment creditors — to cumulate the garnishment costs and attempt to collect them with each successive writ regardless of wether any funds were obtained by the service and filing of the writ. The worst example I saw was after I filed *Watkins*. A judgment creditor filed four blind writs on every bank in a small town. My client did not have a bank account and all of the writs were answered that the garnishee held no funds pursuant to the writ. However, the judgment creditor believed that it had the right to collect all of the garnishment costs and attorney fees. Simply by filing four writs of garnishment the judgment creditor unilaterally increased the judgment from $2,416.26 to $3,193.71, without notice or hearing (Anyone see a procedural due process problem here?), and demanded payment of the inflated amount. This result is not only possible under Peterson's interpretation of the statute, it is encouraged because it is very profitable since most collection agencies pay attorneys a flat monthly retainer.

The lesson that a garnishing judgment creditor needs to learn from this case is that when invoking a statutory remedy one needs to be familiar with the statute. The Fair Debt Collection Practices Act is a strict liability statute and the defense of "that's the way we've always done it" is not going to carry much water.

Timothy W. Durkop. Attorney

[1] I later learned that the use of the pay order was typical on the east side of the state, while on the west side, the judgment creditors generally take judgment against the garnishee defendant.

How to Apply for Compensation of Professionals

in the U.S. Bankruptcy Court for the Eastern District of Washington

By Ian Ledlin

The procedure for applying for compensation of professionals is governed by Local Bankruptcy Rule (LBR) 2016-1. Applicants are required to use Local Forms (LF) 2016 *et seq*. The purpose of these instructions is to explain the operation of the local rule and the forms.

The tools needed for completing these forms include Local Form 2016 *et seq*. (9/99 Revision), any previous Applications and Orders allowing fees, time and billing records, accounting records, Procedural Form B 203 (Disclosure of Fees) filed with the Petition and Statement of Affairs, if a Chapter 13 case, the Plan and Order Confirming Plan along with a Trustee's Status Report, a calculator, a sharp pencil, and possibly an eraser. The time and billing records must state the total time spent and amount charged for each person performing services for which compensation is sought.

After completing these forms, prepare a Notice of the Application (Official Form 20A) and transmit it to the Master Mailing List. File and serve a copy of the Notice, Motion with all attachments, and the Order upon the Reviewing Trustee (The Reviewing Trustee is the U.S. Trustee in a Chapter 7 or a Chapter 11 case, the Chapter 12 Trustee in a Chapter 12 case, or the Chapter 13 Trustee in a Chapter 13 case.). If there are no objections, file an Affidavit of No Objections with the Court. If the Reviewing Trustee has no objections, he or she will endorse the Order and present it to the Court. If there are objections, or if the Reviewing Trustee will not endorse the Order, set the matter for a hearing.

A. Instructions for Completing Local Form 2016, Application for Compensation for Services Rendered And Reimbursement of Expenses Pursuant to 11 USC 330.

1. Name of Applicant: The name of the person seeking compensation or reimbursement from estate property.

2. Position of Applicant: Lawyer for Debtor in Possession, Lawyer for Debtor (Chapter 12 or 13 cases only), etc.

3. Application Number: If this is the first Application, use 1, if the second Application, use 2, etc. The fee allowed on confirmation of a Chapter 13 Plan (as provided by LBR 2016-1(d)(1)) is not considered an award by an Application. If additional Applications are anticipated, check the "Interim" box; otherwise, check the "Final" box.

4. I - Date of Entry of Order Approving Employment: Use the date of the Order approving Applicant's employment. If the Applicant is the lawyer for a Chapter 12 or 13 debtor, answer "NA" unless an Order of employment has been entered.

5. II - Dates Covered by this Application: Fill in the range of dates between which services were performed. If this is the first Application, include pre-petition dates services were provided relating to the bankruptcy case.

6. III - Time and fee chart: Fill in the name, position, hourly rate, total time spent and amount requested as compensation for each person covered by this application in connection with this case. This information is derived from, and must reconcile with, the Itemization of Services Rendered attached to the Application. If this is the first Application, include **ALL** time and amounts, both pre- and post-petition in this Application. An accounting of all the time and amounts is required even if the Applicant has already been paid by a retainer or from other sources.

7. IV - Total amount of reimbursement of expenses requested by this application: If this is the first application, include **ALL** costs, including the filing fee, incurred both pre- and post-petition in connection with this case. This information is derived from, and must reconcile with, the Itemization of Expenses attached to the Application.

8. V - Total of Compensation and Reimbursement requested: Add the total compensation from the chart in Part III to the total expenses from Part IV.

9. VI - If applicant is a trustee, state the maximum amount of compensation allowable under 11 USC 326(a). If the applicant is not a trustee, answer "NA."

10. VII - If applicant's position is **NOT** that of employee of a trustee, debtor in possession or creditors committee, check the box marked N/A. Otherwise, check the box marked Yes or No as appropriate to disclose whether all compensation for services and reimbursement of expenses for which award is sought were necessary to the administration of the case; beneficial to the estate, and do not include any unnecessary duplication of services. If the "No" box is checked, attach an explanation why. It is unlikely that compensation will be awarded for unnecessary or duplicative services.

11. VIII - If applicant is **NOT** the debtor's attorney, check the box marked "N/A." Otherwise, check the box marked Yes or No as appropriate to disclose whether all compensation and reimbursement sought to be allowed for representing the interests of the debtor were necessary and beneficial to the debtor in connection with the case. As a general rule, only a lawyer for a Chapter 12 of Chapter 13 lawyer will only check the Yes or No box in Part VIII. If the "No" box is checked, it is unlikely that compensation will be awarded for unnecessary or non-beneficial services.

12. IX - Check the box marked Yes if compensation or reimbursement previously received has been shared with another entity, or if an agreement or understanding exists between the Applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with this case, except as a member or regular associate of a firm of lawyers; otherwise check the box marked No.

13. X - Mark the boxes indicating which supporting documents are attached.

a. LF 2016A is a Statement of Money or Property Received or Promised Other than by Application. It must be attached with every Application.

b. LF 2016B is a Summary Supporting Application for Compensation for Services or Reimbursement of Expenses. It must be attached with every Application.

c. An Itemization of Services Rendered is required in all cases, except in a Chapter 13 case if the cumulative compensation is $1,000 or less (*e.g.*, where a Chapter 13 case is converted or dismissed before $1,000 of fees have accrued). If the cumulative compensation exceeds $10,000 for all Applications, the itemization must be by project category. See the U.S. Trustee's guidelines for a listing of project categories.

d. An Itemization of Expenses is required in all cases, except in a Chapter 13 case if the cumulative compensation is $1,000 or less. This may be separately stated on the same document as the Itemization of Services rendered.

e. LF 2016C is a Narrative Summary. It is required if the cumulative compensation for all Applications exceeds $10,000.

Continued on Page 20

How to Apply for Compensation of Professionals, *cont'd*

B. Instructions for completing Local Form 2016A, Statement of Money or Property Received or Promised in Connection with this Case Other than by Application or a Plan.

1. Complete the information relating to the identity of the Applicant and of the Application as in LF 2016.

2. Check the box if **NO** money or property was received or promised other than by Application or as part of a Chapter 13 Plan. If the box is checked, this page is complete.

3. (a) - If money or property has been received other than by Application or as part of a Chapter 13 Plan, the following information must be disclosed:

(1) - The amount of money received by attorney or firm for the filing fee.

(2) - The amount of money received before the order for relief (the date the petition is filed if a voluntary case) by the attorney or firm for services and costs. This represents the total amount received pre-petition, less the filing fee.

(3) - The amount of money received after the order for relief by the attorney or firm for services and costs. This does **NOT** include amounts received as the result of previous applications or from the Chapter 13 Trustee.

(4) - The value of any property or service given to the attorney or firm as payment of fees and costs. Describe the property or services. For example, if the debtor transferred (where the transfer is absolute and not for security) his automobile to the attorney, the Description will state that the attorney received a 1974 Dodge Dart, and $2,500 will be stated as the value.

(5) - Total the entries of (1), (2), (3) and (4).

(6) - Disclose the amount remaining in client trust account.

4. (b) - Disclose the amount applied to filing fee and services. Calculate this amount by subtracting entry (a)(6) from entry (a)(5). This amount should reconcile with the Applicant's accounting records.

5. (c) - Disclose any money promised. State the amount of the money promised if fixed, otherwise state the hourly rate. Unless a fixed amount of money is stated, the dollar amount may be left blank. Disclose the nature of arrangement for promise of payment.

6. (d) - Disclose the total amount and value of all money or property received or promised other than by Application. Calculate this by adding item (a)(5) to item (c).

7. (e) - Disclose any other items, such as any liens, guarantees, security interests or promissory notes. Disclose the value of each item.

8. (f) - Disclose the source of all payments and promises. If money was paid, or promises made, by someone other than the debtor, identify entity and relationship to the debtor; otherwise, state that the debtor paid the money or made the promise.

C. Instructions for completing Local Form 2016B, Summary Supporting Application for Compensation for Services or Reimbursement of Expenses.

1. Complete the information relating to the identity of the Applicant and of the Application as in LF 2016.

2. Review the chart summarizing the Applications. It is headed by four columns requiring information from the Applicant: Sequential #; (amounts) Applied for; (amounts) Awarded, and (amounts) Received. The number of rows on the chart used is dependant on the bankruptcy chapter and the number of previous fee applications. If the payments belonging in a particular row were received on multiple dates, list each date (or the range of dates) the payments were received.

3. Complete Row A of the Summary Chart. In the "Received" column, disclose the amounts applied to the filing fee and to services performed. This amount is transferred from part (b) of LF 2016A (separating the amount of the filing fee from the total).

4. If this is a Chapter 13 case, Complete Row B of the Summary Chart. (If this is not a Chapter 13 case, proceed to the next paragraph.) This row discloses the fees received from the Chapter 13 Trustee on confirmation of the plan pursuant to LBR 2016-1(d)(1). In the "Received" column, enter the appropriate dates and amounts. The source of the money disclosed in this box may be from trust account money transferred upon confirmation of the Plan, plus any amounts received from the Trustee not paid into the trust account.

5. If this is not the first Application, disclose the information in the "Prior Application" rows. State the prior Application Number in the "Sequential #" column. The Date of the Application and the amount requested in that Application are disclosed in the "Applied for" column. This information is derived from LF 2016B of the prior fee applications. In the "Awarded" column, disclose the date the Order approving the prior fee request was entered, and the amount of the award. In the "Received" column, disclose the amount that has actually been paid through the date of this Application, with the dates the amounts were received.

6. Move to the row titled "Present Application." It is the second-to-the last row on the Summary Chart. Fill in the Application Number in the "Sequential #" column. For example, if no previous fee applications have been made, use 1. Move to the "Applied for" column. The Date of the Application is that used on LF 2016. The amount of Compensation is transferred from Part III of LF 2016. The amount of Reimbursement is transferred from Part IV of LF 2016.

7. In Row C (the last row of the Summary Chart) for each column, disclose the total amount of Compensation, the total amount of Reimbursement, and the total of Compensation plus Reimbursement.

D. Instructions for completing Local Form 2016C, the Narrative Summary.

1. The Narrative Summary is required by LBR 2016-1(b)(1)(A). This form must be attached where the cumulative requested compensation in all Applications exceeds $10,000.00.

2. Complete the information relating to the identity of the Applicant and of the Application as in LF 2016.

3. Provide a detailed discussion for each topic outlined in LF 2016C. If a Narrative Summary has been filed with a previous fee application, that information may be incorporated by reference, but an update should be provided.

E. Instructions for completing Local Form 2016D, Order Allowing Compensation and Reimbursement of Expenses Pursuant to 11 U.S.C. § 330 or § 331.

1. Complete the information relating to the identity of the Applicant and of the Application as in LF 2016.

2. The "Awarded" part of the Order requires the Applicant to segregate the amount of Compensation from the amount of Reimbursement sought. The "Total" amount must equal the entry in V of LF 2016.

3. The Applicant must further describe the source from which the funds will be paid in the "To be Disbursed" part of the Order: The amount to be paid by a Trustee or by the estate; the amount to be transferred from the Applicant's trust account; or from another source as disclosed in (a)(4) of LF 2016A. The "Total" amount must equal the entry in V of LF 2016.

4. Complete the "Summary of Application Totals" box. These amounts are transferred from Row C of LF 2016B.

Local Form 2016 (9/99)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

Case Name: _____ Case Number: _____

APPLICATION FOR AWARD OF COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES PURSUANT TO 11 USC 330

Name of Applicant : _____
Position of Applicant : _____
Application Number : _____ ❑ Interim ❑ Final

The undersigned applicant applies to the court for an award or allowance of compensation for services rendered and for reimbursement of expenses incurred in the above entitled case pursuant to 11 USC 330 *(or USC 331 if an interim application)*. This application is supported by the following information and attached documents:

I. *(If applicant is employee of trustee, debtor in possession or creditors committee)* Date of Entry of Order Approving Employment: _____

II. Dates Covered by this Application: _____ to _____

III. The name, position, hourly rate, total time spent and amount requested for all compensation for services rendered by each person covered by this application, in connection with this case, is as follows *(If this is the **FIRST** Application, include **ALL** time and amounts, both pre- and post-petition in this Application):*

Name	Position	Hourly Rate	Total Time	Amount Requested
		$_____/hr.		
		$_____/hr.		
		$_____/hr.		
Totals			hrs.	$_____.____

IV. Total amount of REIMBURSEMENT of expenses requested by this application in connection with this case *(If this is the **FIRST** application, include **ALL** costs (including filing fees), both pre- and post-petition):* $_____.____

V Total of Compensation and Reimbursement requested: $_____.____

VI. *(If applicant is a trustee)* The maximum amount of compensation allowable under 11 USC 326(a) is: $_____.

VII. *(If applicant is an employee of trustee, debtor in possession or creditors committee)* All Compensation for services rendered and reimbursement of expenses incurred for which award is sought were necessary to the administration of the case; beneficial to the estate, and does not include any unnecessary duplication of services.

❑ Yes ❑ No ❑ N/A *(If answer is NO attach an explanation.)*

VIII. *(If applicant is the attorney for the debtor)* All compensation for services rendered and reimbursement for expenses incurred for which award is sought for representing the interests of the debtor(s) were necessary and beneficial to the debtor(s) in connection with the case. ❑ Yes ❑ No ❑ N/A *(If answer is NO attach an explanation.)*

IX. Compensation or reimbursement previously received has been shared with another entity, or an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with this case, except as a member or regular associate of a firm of lawyers. ❑ Yes ❑ No *(If answer is YES attach an explanation.)*

X. Attached to this application, and made a part of this application are the following supporting documents:

a ❑ Statement of Money or Property Received or Promised Other than by Application *(required in all cases, LF 2016A)*;

b. ❑ Summary Supporting Application for Compensation for Services or Reimbursement of Expenses *(required in all cases, LF 2016B)*;

c ❑ Itemization of Services Rendered *(required except in Chapter 13 case if cumulative compensation is $1,000 or less; itemization must be by project category if cumulative compensation exceeds $10,000)*;

d ❑ Itemization of Expenses *(required except in Chapter 13 case if cumulative compensation is $1,000 or less)*;

e ❑ Narrative Summary *(required if cumulative compensation exceeds $10,000, LF 2016C)*.

The undersigned Applicant states under penalty of perjury that the representations contained in this application and attachments are true and correct to the best of applicant's knowledge and belief

DATED: _____ _____

(Signature of Applicant)

Name _____
Position: _____
Address _____
Phone _____
Fax: _____

APPLICATION FOR COMPENSATION
AND REIMBURSEMENT - 2

Local Form 2016A (9/99)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

Case Name: _____ Case Number: _____

STATEMENT OF MONEY OR PROPERTY RECEIVED OR PROMISED IN CONNECTION WITH THIS CASE OTHER THAN BY APPLICATION OR A PLAN

Name of Applicant : _____
Position of Applicant : _____
Application Number : _____

❑ No money or property was received or promised other than by application or as part of a Chapter 13 Plan.

(a) Money or things of value received other than by application or as part of a Chapter 13 Plan:

(1) Amount received by attorney or firm for filing fee $_____.____

(2) Amount received before the order for relief by attorney or firm for services and costs $_____.____

(3) Amount received after the order for relief by attorney or firm for services and costs $_____.____

(4) Value of any property or service given to attorney or firm as payment of fees and costs $_____.____
Description:

(5) Total of entries 1, 2, 3 and 4 $_____.____

(6) Amount remaining in client trust account $_____.____

(b) Amount applied to filing fee and services $_____.____
(Subtract entry (a)(6) from entry (a)(5))

(c) Money Promised: $_____.____
Nature of arrangement for promise of payment:

(d) Total amount and value of all money or property received or promised other than by Application or a Chapter 13 Plan *(items(a)(5) and (c))* $_____.____

(e) Other Items *(Value and description of any liens, guarantees, security interests or promissory notes)*:

(f) Source of Payment or Promise *(If other than the debtor, identify entity and relationship to the debtor)*:

STATEMENT OF MONEY
OR PROPERTY RECEIVED

Local Form 2016B (9/99)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

Case Name: ____________________ Case Number: ____________________

SUMMARY SUPPORTING APPLICATION FOR COMPENSATION FOR SERVICES OR REIMBURSEMENT OF EXPENSES

Name of Applicant : ____________________
Position of Applicant : ____________________
Application Number : ______

Sequential #		Applied for	Awarded	Received
A Receipts other than by Application *(Transfer from (b) of Application LF 2016A)*	**Date Compensation Expenses**			___/___/___ $______ $______
B LBR 2016-1(d)(1) Receipts From Chapter 13 Trustee *($1,000 or less)*	**Date Compensation**			___/___/___ $______
Prior Application #_____	**Date Compensation Reimbursement**	___/___/___ $______ $______	___/___/___ $______ $______	___/___/___ $______ $______
Prior Application #_____	**Date Compensation Reimbursement**	___/___/___ $______ $______	___/___/___ $______ $______	___/___/___ $______ $______
Prior Application #_____	**Date Compensation Reimbursement**	___/___/___ $______ $______	___/___/___ $______ $______	___/___/___ $______ $______
Present Application *(Transfer totals from III & IV of Application)* #_____	**Date Compensation Reimbursement**	___/___/___ $______ $______		
Totals C	**Compensation Reimbursement** **Total Comp. + Reimb.**	$______ $______ $______	$______ $______ $______	$______ $______ $______

SUMMARY SUPPORTING APPLICATION FOR
COMPENSATION OR REIMBURSEMENT

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

Case Name: _____ Case Number: _____

NARRATIVE SUMMARY
(Required by LBR 2016-1(b)(1)(A) where requested compensation exceeds $10,000.00)

Name of Applicant : _____
Position of Applicant : _____
Application Number : _____

I. **Background of the Case:**

II. **Financial Condition of the Estate:**

A. **Profit and Loss:**

B. **Amount of Cash on Hand or on Deposit:**

C. **Amount of Accrued Unpaid Administrative Expenses:**

D. **Amount of Unencumbered Funds in the Estate**

III. **Status of the Case**

IV. **Description of Tasks or Projects for which Compensation is Sought:**

V. **If a Chapter 11 Case:**

A. **Status of the Plan and Disclosure Statement:**

B. **Status of Submission of Monthly Operating Statements:**

C. **Payment of Quarterly U.S. Trustee Fees:**

VI. **Other Information**

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

Local Form 2016D (9/99)

Case Name: _____ Case Number: _____

ORDER AWARDING COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES PURSUANT TO 11 U.S.C. § 330 OR §331

THIS MATTER HAVING come before the Court on the #____ (❑ interim ❑ final) application of _____ _____ dated _____ for an order allowing compensation for services rendered and reimbursement of expenses in the above entitled case; and the court being fully advised in the premises;

NOW THEREFORE the below listed amounts are hereby allowed and awarded as compensation and reimbursement pursuant to 11 USC §330 or §331 to the above-named applicant and are authorized to be disbursed or or transferred from funds of the above entitled estate, subject to the availability of funds and the provision of any confirmed plan:

AWARDED

Compensation[1] in the amount of *(from III of LF 2016)*	$_____.____
Reimbursement[2] in the amount of *(from IV of LF 2016)*	$_____.____
TOTAL *(from V on LF 2016)*	$_____.____

TO BE DISBURSED

By trustee or estate	$_____.____
By transfer from Attorney/Client Trust Acct	$_____.____
Other *(from (a)(4) on LF 2016A)*	$_____.____
TOTAL *(from V on LF 2016)*	$_____.____

DATED: _____

_____
U.S. Bankruptcy Court Judge

Presented By:

_____

Endorsed By:

_____
Reviewing Trustee
(U.S. Trustee if Chapter 7 or 11,
Standing Trustee if Chapter 12 or 13)

Summary of Application Totals
(From Row C, LF 2016B)

Total Comp. + Reimb. Applied for	$_____.____
Total Comp. + Reimb. Awarded	$_____.____
Total Comp. + Reimb. Received	$_____.____

[1]If this is the Order on first Application, includes compensation earned pre-petition. If this is a Chapter 13 case, and if this is the Order on first Application, also includes any compensation awarded on confirmation of the plan.

[2]If this is the Order on first Application, includes filing fee and costs incurred pre-petition.

Poetry Corner

Song of the Wage Earner

(News Item: The Eastern District of Washington has made a drastic reduction in number of its unconfirmed chapter 13 plans.)

I've got the Plan right here.
The language isn't clear.
But the goddamn case has hung around one year.
Confirm! Confirm!
The judge says the Plan's confirmed.
And if the judge says the Plan's confirmed,
Confirmed. Confirmed.

It's a twelve page Plan
No one can understand.
But if she'll close her eyes then I know she can
Confirm! Confirm!
The judge can confirm the Plan.
And if the judge can confirm the Plan,
Confirmed. Confirmed.

There are some new claims filed,
Some brand new taxes piled,
And the debtors have discovered yet another child.
Amend! Amend!
The judge says they must amend.
And if the judge says they must amend,
Confirm. Confirm.

Some traffic fines are owed.
The judge has read the Code.
He says he has to let this guy right back on the road.
Can Drive! Can Drive!
The Code says this guy can drive.
And if the judge says this guy can drive,
Confirm. Confirm.

They've got some friends that they,
They say they want to pay
If they can blow all their other debts away.
Don't Pay! Don't Pay!
Their Plan says that they won't pay.
And if the judge says that it's okay,
Confirm. Confirm.

I hear a Creditor
The judge cannot ignore.
He says the Debtors can afford to pay much more.
Bleed Dry! Bleed Dry!
Squeeze them until they're Sore.
And once they're completely Poor,
Confirm. Confirm.

The Plan does not address
The claims of IRS.
Who in the hell can figure out this mess?
Confirm! Confirm!
We need the stats, I guess.
And if we need to claim success,
Confirm. Confirm.

Jake Miller

Editor's note: The above was sung by the author at the 1998 Sun Mountain gathering to the easily recognizable tune of "Guys and Dolls", i.e. the song that has as its refrain "can do, can do". The magnificence of the lyrics obviously drowned out the questionable quality of the voice, for he received a standing ovation.

Ch. 13 Trustee's Corner

Chapter 13 is still alive and well. As you can see from the statistics for the month ending in August 1999, we are averaging between 140-150 new filings per month. At the same time the average number of cases disposed of is about 120. This has caused the total of unconfirmed cases to creep up from its January low of 598 to the August figure of 769. But perhaps what is even more important than the raw total of unconfirmed cases is the aging of those cases. You will note that largest number of unconfirmed cases, some 442, is less than 90 days old. There are 221 cases that are between 90 and 180 days old, while slightly over 100 are more than 6 months old. Two years ago there were hundreds of cases over 270 days old. Your continuing efforts to help move these cases through the confirmation process is greatly appreciated.

In that regard, one recurring problem involves the lack of timely filing of the plan, schedules and other required documents. In recent weeks the number of rescheduled cases due to the lack of timely filed plans and schedules has been increasing. We were seeing rescheduled dockets of 13, 14 and 15 cases. With new filings at their current levels, it simply isn't an effective use of our resources to handle these cases multiple times. Moreover, the tardy filing of plans and schedules affects the aging of unconfirmed cases pushing them into the older categories. In an effort to turn this trend around, the Trustee filed motions to dismiss for failure to timely file plans and schedules in 16 cases. While the court denied the Trustee's motion in every instance, Judge Williams cautioned each debtor's lawyer against appearing before her on a similar matter without good cause. Such a reappearance she said could result in an invitation to join the "$100.00 Club."

Remember FRBP 1007(c) and 3015 (b) require the plan and schedules be filed with the petition or within 15 days thereafter, unless the court for cause grants an extension. So if circumstances prevent you from filing the plan and schedules within the

Statistics for AUGUST 1999

Cases Filed vs. Unconfirmed Cases Disposed Of

	Filed	*Conf.*	*Dism. Pre-Conf*	*Conv. Pre-Conf*	*Transf. Pre-Conf*	*Total Disposed*	+/-
01/99	107	76	22	17		115	-8
02/99	138	97	23	6		126	12
03/99	180	76	19	15		110	70
04/99	127	62	18	14		94	33
05/99	130	96	12	8		116	14
06/99	153	87	21	13		121	32
07/99	149	64	19	4		87	62
08/99	145	167	17	11		195	-50
TOTALS	**1129**	**725**	**151**	**88**	**0**	**964**	**165**

Unconfirmed Case Statistics

	Under 90	**90 - 180**	**180-270**	**Over 270**	**TOTALS**
01/99	336	177	56	29	**598**
02/99	362	179	48	21	**610**
03/99	417	197	45	19	**678**
04/99	433	214	44	18	**709**
05/99	421	234	49	19	**723**
06/99	400	281	60	16	**757**
07/99	421	292	83	23	**819**
08/99	**442**	**221**	**83**	**23**	**769**

Ch. 13 Trustee's Corner, *cont'd.*

prescribed times, I urge you to ask the court to issue an order extending the time within which these documents need to be filed. This simple step could prevent the need to join Judge Williams' $100.00 Club.

On a final note, the Trustee's office will be looking to see that the updated prescribed Chapter 13 Plan and Debtor Plan Payment Declaration are filed in each new Chapter 13 case. The new Debtor Plan Payment Declaration means, of course, that this form is now consistent with Local Rule LBR 2083-1(p) regarding wage directives and the Trustee's office will more aggressively enforce that rule. Simply put, this rule provides that if debtors do not want an income directive submitted by the Trustee in their case, they must file an objection to the wage directive with notice to the Trustee and secure an order of the court directing the Trustee not to seek an income directive. Failing such an order, it will be the Trustee's practice to submit an income directive, where practicable, immediately upon receipt of the plan.

If you would like a copy of the New Plan and Debtor Plan Payment Declaration sent to you on a floppy disk, please call or to Karina Burkhardt at (509) 747-8481, extension 21 and let her know the word processing format you are using (e.g. Word Perfect 8.0). We will be happy to send a floppy disk to you downloaded with the new forms.

Cases Set for Hearing					
	Under 90	**90 - 180**	**180-270**	**Over 270**	**TOTALS**
Set for Contested Hearing	14	75	30	10	129
Set for Uncontested Hearing	13	38	14	2	67
Dismissal for Non-Pmt Proceedings*	2	17	10	1	30
TOTALS	**29**	**130**	**54**	**13**	**226**

* Cases in this category may also be set for a confirmation hearing.

341 Statistics						
	# Sched for 341	***Conf***	***Obj***	***Resched***	***Mot. to Dismiss***	***Conv/Dism***
01/99	158	47	78	17	12	4
02/99	112	40	58	6	5	3
03/99	138	50	69	8	6	5
04/99	159	55	78	11	11	4
05/99	133	48	61	13	8	3
06/99	140	53	61	10	13	3
07/99	156	56	74	11	12	3
08/99	**137**	**39**	**67**	**14**	**14**	**3**
TOTALS	**996**	**349**	**479**	**76**	**67**	**25**
%		**29%**	**49%**	**10%**	**10%**	**2%**

Introduction to Chapter 13 Forms

The following are two new local forms which have been approved by the judges. The first is Local Form 2083 - the Chapter 13 Plan. The second is Local Form 2083A - Debtor's Plan Payment Declaration.

LF 2083 (6/99)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. Case No.

Debtor(s).

NOTICE

The following plan proposed by the debtor contains provisions which may significantly affect your rights. A creditor who wishes to oppose the plan may do so by filing a timely objection to the plan. Any objection must be in writing, filed with the court and served upon the debtor, debtor's counsel (if any), and the Chapter 13 Trustee no later than twenty-one (21) days after the conclusion of the meeting of creditors or within twenty-five (25) days from the date of service of the plan, whichever is later. If no objections are filed, the court may confirm the Chapter 13 Plan without further notice. ***The provisions of the confirmed plan will bind the debtor and each creditor.***

A proof of claim must be filed by or on behalf of each creditor, including secured creditors, in order for the creditor to be eligible to be paid by the trustee. The trustee will treat the amount stated on the filed proof of claim as the amount of a creditor's claim unless otherwise determined by order of the court. See the notice of commencement of case for the claims bar date, the date by which a proof of claim must be filed in order to be treated as timely filed.

If you need additional information to determine how your rights may be affected, you may attend the meeting of creditors, obtain copies of the schedules and statement of affairs from the clerk of the court or seek the advice of an attorney. Except as noted otherwise, references to the "debtor" include such individual's spouse in a joint case.

CHAPTER 13 PLAN

Debtor proposes the following ☐ ORIGINAL ☐ _____ AMENDED Chapter 13 Plan.
(Seq. #)

I. **FUTURE EARNINGS, INCOME AND ASSETS COMMITTED TO TRUSTEE FOR FUNDING OF PLAN**

Debtor shall pay the trustee as follows:

A. PERIODIC PAYMENTS

☐ LEVEL PAYMENTS

$_____ each month, commencing within 30 days after the plan is filed.

☐ GRADUATED PAYMENTS

$_____ each month for first _____ months commencing within 30 days after the plan is filed.
$_____ each month for next _____ months commencing _____.
$_____ each month for next _____ months commencing _____.

B. Debtor ☐ COMMITS ☐ DOES *NOT* COMMIT all tax refunds to funding of the plan, except to the extent otherwise subject by law to setoff, recoupment or alternative disposition.

C. Debtor commits the following other income and assets to funding of the plan:

DATE	SOURCE	AMOUNT

D. This Plan is a: ☐ 100% Plan ☐ Base Plan/Base Amount $_____.
[For "base plan", the base amount is the total sum of payments to be made to the trustee over the entire plan. If the base amount is ultimately insufficient to pay those creditors required to be paid in full under the plan, (i.e. administrative expenses and/or secured, executory contract/unexpired lease, arrearage/default, priority and separate classification claims) the base amount will be increased to the extent necessary to fund the plan.] If debtor commits tax refunds to funding of the plan, and the commitment of tax refunds will result in the plan completing in less than 36 months, the base amount shall be increased to the extent necessary to result in a plan of at least 36 months duration.

II. DURATION OF PLAN

Payments shall be made over a period of not less than 36 months nor more than 60 months, unless debtor pays all creditors in full in less than 36 months. Estimated length of plan is _____ months.

III ADMINISTRATIVE EXPENSES AND CLAIMS

A. DISBURSEMENTS MADE BY TRUSTEE

From funds received, the trustee shall make disbursements in the sequence set forth below except as provided in Section VII. (If the trustee has insufficient funds on hand to make disbursements to all classes, the funds will be distributed as provided to the extent funds are available. Claims within a particular class which cannot be paid the proposed disbursements shall be paid a pro rata share of the proposed disbursement.) A monthly payment of less than $15.00 on a particular claim shall not be distributed, but shall be accumulated and distributed each time the aggregate amount of accumulated funds is $15.00 or more.

1. ADMINISTRATIVE EXPENSES
   a. To the standing trustee, the percentage fee fixed under 28 U.S.C. § 586(e)(1)(B).
   b. To the debtor's attorney, the initial sum of $_____, of which $_____ remains unpaid . (The initial sum may not exceed $1,000.00). Any additional amounts shall be paid only upon appropriate application and allowance by further order of the court. The projected amount of total attorney fees is _____. All attorney fees shall be paid as follows:
      ☐ In full after continuing, secured, executory contract/unexpired lease and arrearage/default creditors, but before any priority, separate classification or general unsecured creditors.
      ☐ $_____ per month.
      ☐ _____% of each monthly disbursement to creditors.

   c. Other:_____.

2. CONTINUING CLAIMS (LONG TERM DEBTS)
   To creditors to whom the last payments are due beyond the term of the plan, each creditor shall retain any lien and payments shall be maintained according to the terms of the original obligation as set forth below. In the event any obligation is paid in full before the plan is complete, future funds previously devoted to such creditor will be disbursed to other creditors under the plan.

   a. Regular periodic payments accruing postpetition on obligations that were current as of the date of petition filing will be paid directly to such creditor by debtor as set forth in paragraph III.B. below.

b. Regular periodic payments accruing postpetition on obligations that were delinquent as of the date of petition filing will be paid to such creditor by trustee as set forth below. Arrearages will be paid as set forth in paragraph III.A.5.a. below.

CREDITOR	DESCRIP. OF COLL./CLAIM	MO. PMT.

3 SECURED CLAIMS

a To creditors whose secured claims will be paid within the term of the plan, each creditor shall retain its security interest/lien and be paid the amount of its secured claim plus interest from the date of petition filing as calculated by the trustee at the interest rate and monthly payment set forth below. The amount of a creditor's secured claim shall be the amount stated as secured on a proof of claim filed by or on behalf of the creditor unless the court determines a different amount following the filing of a separate motion to value the claim or the filing of an objection to the claim. To the extent that the amount of a creditor's secured claim is determined to be less than the amount of its total claim, any portion of the claim in excess of the amount of its secured claim will be treated as an unsecured claim and paid as provided in section III.A.6. below, if entitled to priority under 11 U.S.C. §507, or if not, as provided in section III.A.8. below. An order valuing the secured portion of a claim, at less than the total amount of the claim, voids the creditor's lien to the extent of the unsecured portion of the claim. In the event the case is dismissed prior to discharge, the lien so voided will be reinstated unless otherwise ordered by the court.

CREDITOR	DESCRIP. OF COLL.	TOTAL CLAIM	COLL. VALUE	INT. RATE	MO. PMT.

b Debtor surrenders the collateral securing the claims of the following creditors in satisfaction of the secured portion of such creditor's claim. To the extent the collateral does not satisfy such creditor's claim, the creditor shall be treated as the holder of an unsecured claim and paid as provided in section III.A.6. below, if entitled to priority under 11 U.S.C. §507, or if not, as provided in section III.A.8. below. The entry of the order confirming the plan shall terminate the automatic stay of 11 U.S.C. §362(a) as to the collateral surrendered, thereby allowing recovery and disposition of such property according to applicable non-bankruptcy law.

CREDITOR	DESCRIP. OF COLL.	TOTAL CLAIM	COLL. VALUE

c Debtor shall file a separate motion under 11 U.S.C. §522(f) to avoid the following judicial liens or nonpossessory, nonpurchase-money security interests. Any claim on which the lien is avoided shall be treated as an unsecured claim not entitled to priority and paid as provided in section III.A.8. below.

CREDITOR	DESCRIP. OF INTEREST	EXEMPTION IMPAIRED

4 EXECUTORY CONTRACTS AND UNEXPIRED LEASES

a. ASSUMPTIONS

1 Debtor assumes the following executory contracts and/or unexpired leases:

III.A.4.a.1.

CREDITOR	TYPE OF AGREEMENT	DESCRIP. OF PROP./CLAIM

2. To creditors whose executory contracts and/or unexpired leases have been assumed, adequate assurance of future performance will be provided by the contract or lease payments being made according to the terms of the original obligation.

   (a) Regular periodic payments accruing postpetition, on obligations that were current as of the date of petition filing, will be paid directly to such creditor by debtor as set forth in paragraph III.B.below.

   (b) Regular periodic payments accruing postpetition, on obligations that were delinquent as of the date of petition filing, will be paid to such creditor by trustee as set forth below. Defaults/pecuniary losses will be paid as set forth in paragraph III.A.5.b. below.

CREDITOR	DESCRIP. OF PROP./CLAIM	TOTAL CLAIM	MO. PMT.

b. REJECTIONS

Debtor rejects the following executory contracts and/or unexpired leases and surrenders the property. Any allowed unsecured claim for damages resulting from such rejection shall be paid as provided in section III.A.8. below. The entry of the order confirming the plan shall terminate the automatic stay of 11 U.S.C. §362(a) as to the property surrendered, thereby allowing recovery and disposition of such property according to applicable non-bankruptcy law.

CREDITOR	TYPE OF AGREEMENT	DESCRIP. OF PROP./CLAIM

5. ARREARAGES/DEFAULTS

a. To creditors to whom the last payments are due beyond the term of the plan, arrearages shall be cured at the interest rate and monthly payment set forth below.

CREDITOR	DESCRIP. OF COLL./CLAIM	AMT. OF ARREARAGE	INT. RATE	MO. PMT.

b. To creditors whose executory contracts and/or unexpired leases have been assumed, debtor will cure any default and compensate the other party to such contract and/or unexpired lease for any actual pecuniary loss at the interest rate and monthly payment set forth below.

CREDITOR	DESCRIP. OF PROP./CLAIM	AMT. OF DEFAULT/ PECUNIARY LOSS	INT. RATE	MO. PMT.

III.A.6.

6. PRIORITY CLAIMS (OTHER THAN ADMIN. EXPENSES)

To unsecured creditors entitled to priority as defined in 11 U.S.C. §507, who file a proof of claim within 90 days after the first date set for the meeting of creditors called pursuant to 11 U.S.C. §341(a) [or before 180 days after the date of the order for relief in the case of governmental units], payment in full in deferred cash payments over the term of the plan **pro rata** as follows, unless the holder of a particular claim agrees to a different treatment. Unsecured creditors entitled to priority, who fail to file a proof of claim within the time set forth above, shall be paid as provided in section III.A.8.b. below.

CREDITOR	DESCRIP. OF CLAIM	AMT. OF CLAIM

7. SEPARATE CLASSIFICATIONS OF UNSECURED CLAIMS

To unsecured creditors not entitled to priority, separately classified pursuant to 11 U.S.C. §1322(b)(1), a dividend over the term of the plan **pro rata** as follows. (Debtor has filed with the plan an affidavit stating the basis for each separate classification.)

☐ Disburse available funds only to separately classified unsecured claims until paid in full, then disburse remaining available funds to other unsecured creditors. (Requires 60 month plan.)

☐ Disburse available funds **pro rata** to all unsecured creditors for the equivalent of 36 monthly payments, then disburse remaining available funds only to separately classified unsecured claims until paid in full.

CREDITOR	DESCRIP. OF CLAIM	AMT. OF CLAIM

8. UNSECURED CLAIMS

a. TIMELY FILED

To unsecured creditors not entitled to priority, who file a proof of claim within 90 days after the first date set for the meeting of creditors called pursuant to 11 U.S.C. §341(a) [or before 180 days after the date of the order for relief in the case of governmental units], a dividend over the term of the plan **pro rata** as follows:

☐ 100% Plan: Full payment of their allowed claims.
☐ Base Plan: Payment of their allowed claims to the extent of funds remaining after payment of administrative expenses, continuing, secured, executory contract/unexpired lease, arrearage/default, priority and separate classification claims.

b. TARDILY FILED

To unsecured creditors, who fail to file a proof of claim within 90 days after the first date set for the meeting of creditors called pursuant to 11 U.S.C. §341(a) [or before 180 days after the date of the order for relief in the case of governmental units], a dividend over the term of the plan **pro rata** as follows:

III A 8.b

SUCH CLAIMS SHALL BE TREATED AS ALLOWED CLAIMS, UNLESS DISALLOWED BY ORDER OF THE COURT, BUT SHALL BE SUBORDINATED TO TIMELY FILED CLAIMS AND PAID **PRO RATA** ONLY AFTER FULL PAYMENT OF TIMELY FILED CLAIMS TO THE EXTENT NECESSARY FOR THE PLAN TO COMPLY WITH 11 U.S.C. §1325(a)(4), 11 U.S.C. §1325(b)(1)(B) AND THE TERMS OF THE PLAN.

9. POSTPETITION CLAIMS

Claims filed under 11 U.S.C. §1305 shall be treated as follows:

a. Claims for taxes that become payable to a governmental unit while the case is pending shall be treated as priority claims and paid as provided in section III.A.6 above.

b. Claims for consumer debt that arise after the date of petition filing, and that are for property or services necessary for the debtor's performance under the plan, shall be treated as timely filed unsecured claims and paid as provided in section III.A.8 above, but only if the specific claim is provided for in a modification of the plan. The claim shall be disallowed if the creditor knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained.

B. DISBURSEMENTS MADE BY DEBTOR

Debtor shall make disbursements directly to creditors as follows:

To secured creditors whose rights are ***not*** being modified pursuant to 11 U.S.C. §1322(b)(2) and are ***not*** otherwise impaired, the secured claim of each shall be paid directly by the debtor according to the terms of the original obligation at the interest rate and monthly payment set forth below. [A secured claim is not being modified and is not impaired if all payments were current as of the date of petition filing, none of the terms of the debtor's agreement with the creditor are being changed, and the collateral had a value as of the date of petition filing equal to or greater than the net amount due.]

CREDITOR	DESCRIP. OF COLL.	TOTAL CLAIM	COLL. VALUE	INT. RATE	MO. PMT.	FINAL PMT. DATE

IV. **INSURANCE**

Debtor shall keep any collateral continuously insured in accordance with the terms of the original obligation with the creditor until the amount of its secured claim is paid.

V. **TAX RETURNS**

A. [ ] All tax returns and tax reports due prepetition have been filed.

[ ] The following tax returns and tax reports due as of the date of petition filing have not been filed:

Tax Agency	Kind of Tax	Tax Period	Date Return Will Be Filed

V.B.

B. Debtor shall file all postpetition tax returns/tax reports and pay all postpetition taxes as they come due.

VI. COMPARISON WITH CHAPTER 7

The value, as of the date of petition filing, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7 of the Code on such date. If the case were commenced under Chapter 7, the estimated result would be as follows:

Net value of non-exempt property: _____ +

Total unsecured priority claims: _____ −

Funds available for distribution on non-priority unsecured claims and administrative expenses: _____

VII. SPECIAL PROVISIONS (OPTIONAL)

VIII. REVESTMENT OF PROPERTY

Property of the estate shall revest in the debtor upon:

☐ Confirmation of the plan.
☐ Dismissal or discharge only.

In the event the case is converted to Chapter 7, 11 or 12, property of the estate shall vest in accordance with applicable law. Debtor shall be responsible for the preservation and protection of all property of the estate.

IX. CERTIFICATE

The debtor's attorney (or the debtor if no attorney) hereby certifies under penalty of perjury that this plan is a duplicate of the plan required by local rule.

DATED:

_____
Debtor

_____
ATTORNEY FOR DEBTOR
Attorney Address
Attorney Telephone

_____
Debtor

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. Case No.

Debtor(s).

DEBTOR'S PLAN PAYMENT DECLARATION

1. Plan payments shall be made:

☐ Weekly
☐ Bi-weekly
☐ Semi-monthly
☐ Monthly
☐ _____

☐ Other Payments

DATE	SOURCE	AMOUNT

2. The first plan payment will be made on or before _____,19_____. (The date specified must be within 30 days after the date the plan is filed.)

3. All subsequent plan payments will be made on or before the _____day of each subsequent month. (The day specified will be the day when the plan payment is due each month for the remaining term of the plan.)

4. The debtor's employer/income source is as follows:

a. Debtor No. 1_____
Employee I.D. or S.S.N._____
Employer/
Income Source_____
Address_____
_____
_____
Phone No. ( )_____

Debtor No. 2_____
Employee I.D. or S.S.N._____
Employer/
Income Source_____
Address_____
_____
_____
Phone No. ( )_____

b. Debtor No. 1 is paid:

☐ Weekly
☐ Bi-weekly
☐ Semi-monthly
☐ Monthly
☐ Other_____

Debtor No. 2 is paid:

☐ Weekly
☐ Bi-weekly
☐ Semi-monthly
☐ Monthly
☐ Other_____

c. Deduct payments from wages or income source of:

☐ Debtor No. 1 _____ each month

☐ Evenly from each check
☐ All from one check. If so, pay period from which to deduct is _____.
☐ Other _____.

☐ Debtor No. 2 _____ each month

☐ Evenly from each check
☐ All from one check. If so, pay period from which to deduct is _____.
☐ Other _____

5 Debtor acknowledges:

a. Immediately after filing, the trustee is authorized to present to the court an order, without notice, directing any entity from whom the debtor receives money, such as employers and governmental agencies, to pay all or part of such income to the Chapter 13 Trustee, except to the extent otherwise subject by law to setoff, recoupment or alternative disposition.

b. Payments made by the debtor directly to the trustee will only be permitted when specifically authorized by an order of the court pursuant to LBR 2083-1(b).

If direct payments are authorized by the court, such payment will be made:

1. In the form of a ***cashier's check*** or ***money order*** only; (No personal checks or cash will be accepted.)

2. Payable to Daniel H. Brunner, Trustee, and sent to P. O. Box 1513, Spokane, Washington 99210-1513; and

3. With the debtor's first and last name and bankruptcy case number, exactly as they appear on the bankruptcy petition, clearly printed on the check.

Dated

_____
Attorney for Debtor

_____
Debtor

_____
Debtor

What Happened to Pat?

Patrick F. Hussey wishes to inform all of his friends/colleagues in Central and Eastern Washington that he has now associated with the Everett Law Firm of Anderson Hunter, 2702 Colby Ave., Suite 1001, Everett, WA 98201. His telephone number is (425) 252-5161. Pat's practice will continue to emphasize reorganizations, bankruptcy and insolvency work.

Comings & Goings

In February 1999, **Jennifer L. Aspaas** joined the firm of Karr Tuttle Campbell in Seattle, and works primarily in the areas of creditor rights in bankruptcy and residential foreclosure. Ms. Aspaas held the position of Staff Attorney for the Office of the Chapter 13 Trustee from April 1998 to February 1999, after serving as a temporary law clerk for the Honorable Patricia C. Williams from September 1997 to April 1998. Ms. Aspaas graduated from Gonzaga Law School in 1996. In 1997, she received her L.L.M. in taxation from the University of Washington School of Law.

In March 1999, **Beverly A. Benka** joined the Office of the Chapter 13 Trustee as a Staff Attorney. Ms. Benka served as a law clerk to the Honorable John M. Klobucher from May 1996 to March 1999. Prior to joining the Bankruptcy Court, she was an associate at a Spokane firm, practicing in Eastern Washington and Northern Idaho. Ms. Benka graduated from Gonzaga Law School in 1994.

In June 1999, **Helen Lutyens** was appointed as a Judicial Assistant to Judge Klobucher. Ms. Lutyens is a third-year law student at Gonzaga Law School and previously worked in the Bankruptcy Court Clerk's Office.

The **Chapter 13 Trustee's Office** has added a few new staff members and has recently reassigned the cases among the case administrators. Please see the revised telephone directory in this issue.

Ms. Diane Cunningham U.S. Bankruptcy Court
904 West Riverside
PO Box 2164
Spokane, WA 99210-2164

Bankruptcy Bar Association
Eastern District of Washington
P. O. Box 1219
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